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Prepared by the Legislative Council staff
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CHAPTER 3-02-02

3-02-02-01. Examination fees. The following examination fees have been established by the board for the certified public accountants examination:

1. An application fee of one hundred twenty dollars. If the applicant has not passed the full examination by one year after the date of the applicant's last application, a reapplication fee of sixty dollars will be required.

2. Applicants will also be required to pay testing-related fees of not more than ~~one~~ two hundred fifty dollars per ~~exam~~ examination section, either to the board or a third party designated by the board.

History: Amended effective July 1, 1981; July 1, 1985; July 1, 1987; July 1, 1991; March 1, 1995; September 1, 2001; December 1, 2003; July 1, 2005.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-04

TITLE 7

AGRICULTURE COMMISSIONER

JUNE 2005

CHAPTER 7-12-01

7-12-01-01. Adoption of standards.

1. The American national standard safety requirements for the storage and handling of anhydrous ammonia "K61.1 - 1989" is hereby adopted; except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2 of this standard are adopted as amended by North Dakota Century Code section 19-20.2-01.

2. The ~~1995~~ 2004 edition of the American society of mechanical engineers boiler and pressure vessel code, section II; section V; section VIII, division 1; and section IX are hereby adopted and incorporated by reference as a part of this article.

3. The ~~1995~~ 2004 edition of the national board inspection code, an American national standard, is hereby adopted and incorporated by reference as a part of this article.

4. The American society for nondestructive testing standard "SNT-TC-1A" is hereby adopted and incorporated by reference as a part of this article.

5. The ~~1995~~ 2004 edition of ASME B31.3, the American national standard for chemical plant and petroleum refinery piping, is hereby adopted and incorporated by reference as a part of this article.

6. The ~~1995~~ 2004 edition of ASME B31.5, the American national standard for refrigeration piping, is hereby adopted and incorporated by reference as a part of this article.

7. The American petroleum institute standard 620, recommended rules for design and construction of large, welded, low-pressure storage tanks, is hereby adopted and incorporated by reference as a part of this article.

History: Effective July 1, 1996; amended effective June 1, 2005.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-02. Definitions. The following definitions are in addition to those thirty-four definitions listed in "ANSI K61.1 - 1989", section 2. Note that part 2.5 of section 2, definitions, is altered by North Dakota Century Code section 19-20.2-01.

1. "Accident or incident" means an event involving nurse tanks or storage containers and their appurtenances which results in damage to pressure vessels or their appurtenances, or both, requiring repair. Leakage or discharge of more than one hundred pounds [45.36 kilograms] of anhydrous ammonia will be considered an incident.

2. "Anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.

3. "Bulk delivery vehicle" means a United States department of transportation inspected and approved cargo tank.

4. "DOT specifications" means regulations of the United States department of transportation published in 49 CFR chapter 1.

~~4.~~ 5. "Existing anhydrous ammonia storage facility" means any permanent anhydrous ammonia storage facility constructed before July 1, 1985.

~~5.~~ 6. "Hydrostatic test" means a pressure test of a storage tank using water as a medium to the standards referenced in the national board inspection code.

~~6.~~ 7. "Labeled" means there is attached a label, symbol, or other identifying mark of a nationally recognized testing laboratory which makes periodic inspections of the production of such equipment and whose labeling indicates compliance with nationally recognized standards or tests to determine safe use in a specified manner.

~~7.~~ 8. "National board" means the national board of boiler and pressure vessel inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the various governmental jurisdictions who are charged with the enforcement of the provisions of the American society of mechanical engineers code.

~~8.~~ 9. "New anhydrous ammonia storage facility" means any permanent anhydrous ammonia storage facility constructed after July 1, 1985.

~~9.~~ 10. "Nurse tank" means an implement of husbandry meeting the definition of section 2.2 of the ANSI K61.1 standard.

~~10.~~ 11. "Refrigerated storage facility" means an anhydrous ammonia storage facility utilizing tanks for the storage of anhydrous ammonia under refrigerated conditions.

~~11.~~ 12. "Registered pressure vessel" means a permanent storage container inspected by the chief boiler inspector and identified by a decal having a unique identification number, preceded by the letters "AA".

~~12.~~ 13. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and reerected at the same location or erected at a new location without change of ownership.

~~13.~~ 14. "Retail and storage facility" means an anhydrous ammonia storage facility selling or intending to sell anhydrous ammonia to the general public.

~~14.~~ 15. "Secondhand pressure vessel" means a pressure vessel of which both the location and the ownership have been changed after primary use.

~~15.~~ 16. "SNT-TC-1A" means the society for nondestructive testing standard for nondestructive testing of pressure vessel welds, material, and the testing of personnel making nondestructive tests.

~~16.~~ 17. "Storage facility" means an anhydrous ammonia storage facility transferring or filling anhydrous ammonia for its own use and not for sale to the general public.

~~17.~~ 18. "Tank car" means a pressure vessel designed to be permanently attached to or forming a part of a railcar structure in compliance with the department of transportation specifications (formerly ICC specifications), and having the approval of the association of American railroads.

~~18.~~ 19. "Wet fluorescent magnetic particle test" means a nondestructive test of interior tank welds using a magnaflux procedure with fluorescent lighting to detect surface cracks, using SNT-TC-1A standards.

History: Effective July 1, 1996; amended effective June 1, 2005.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-05. Specific requirements for nonrefrigerated anhydrous ammonia storage facilities.

1. **Facility siting requirements:**

   a. The siting of the facility must comply with North Dakota Century Code section 19-20.2-05 and this compliance must be verified by the chief boiler inspector.

   b. The facility must be properly licensed by the board of county commissioners in which the facility is located and by the agriculture commissioner.

   c. The facility must be accessible to emergency vehicles.

   d. A facility identification sign must be displayed stating the name, address, and telephone number of the nearest representative, agent, or owner. An emergency telephone number must also be displayed. This sign must be posted near the entrance of the facility. Letters must be at least two inches [50.8 millimeters] high, and the sign visible from no less than fifty feet [15.24 meters].

2. **Storage container requirements:**

   a. The ASME manufacturer's data report must be provided when requested by the chief boiler inspector, should repairs, alterations, or metallurgical data be required.

   b. The container must be ASME constructed, if installed after November 1, 1987.

   c. The container must be national board registered, if installed after November 1, 1987. For secondhand and reinstalled storage containers, a manufacturer's data report must be furnished to the chief boiler inspector if the container is not national board registered.

   d. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.

   e. Container markings and/or decals must meet the requirements of ANSI K61.1.

   f. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection code and the proper documentation must be available for inspection if requested by the chief boiler inspector.

   g. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.

h. Supports and saddles adequately must support the container as required by ANSI K61.1, and there must be no concentration of excessive loads on the supporting portion of the shell.

i. A container liquid level gauge must be installed and be operable.

j. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.

k. Safety valve manifolds meeting the requirements of ANSI K61.1 must be installed between the container and the safety valves required to be installed.

l. Container safety valves must be ASME and national board stamped.

m. Container safety valves must be date current and in operable condition.

n. Container safety valves must have rain caps in place.

o. Installed safety valve capacity must comply with appendix B of ANSI K61.1. The installed capacity must be sufficient with a manifold or manifolds in operation as designed by the manufacturer.

3. **Requirements for piping and appurtenances:**

a. Excess flow valves must be installed at all tank openings, or in lieu thereof, approved quick-closing internal valves may be installed which, except during operating periods, must remain closed.

b. Main stop valves must be labeled for anhydrous ammonia service and be in good operating condition.

c. Main stop valves must be labeled or color coded to indicate liquid or vapor service.

d. System piping must be at least schedule 40 where welded and schedule 80 where threaded. Threaded and seal welded connections must be at least schedule 80. Piping must be at least ASTM A-53 grade B seamless or electric resistance welded (ERW) pipe. ASTM A-53 type F piping is prohibited.

e. Welded piping must be welded by an ASME section IX certified welder, and proof of the certification must be available if requested by the chief boiler inspector.

f. Threaded piping must not be used underground for new installations.

g. Pipe and pipe fittings must not be cast iron, brass, copper, zinc, or galvanized.

h. Flexible fittings or expansion joints, or both, must be used where necessary.

i. Underground piping must be installed using approved corrosion protection.

j. For new systems, the system piping must be pressure tested at the working pressure of the system and the integrity of the system proven.

k. Approved bulkheads or breakaways, or both, must be provided at nurse tank fill stations. Emergency shutoff valves must be in place on liquid and vapor piping before the bulkhead or breakaways, or both. Approved cables must be connected to the emergency shutoff valves and these cables can be activated both at the valves and at a remote location. Breakaway action will close the valves.

l. Approved bulkheads and breakaways must be provided at truck unloading stations. There must be an emergency shutoff valve on the vapor piping on the system side of the bulkhead and a backcheck valve is installed on the liquid piping on the system side of the bulkhead. Approved cables must be connected to the emergency shutoff valve and these cables can activate the valve both at the valve and at a remote location.

m. Date current hydrostatic relief valves must be installed wherever liquid may become trapped between closed valves.

n. Transfer hoses must be date current and not be weather checked or cut to expose the cords.

o. Transfer pump, if used, must be rated for anhydrous ammonia service.

p. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the discharge side of the pump, before the bypass piping loop. This gauge must be a liquid filled gauge.

q. Compressors, if used, must be rated for anhydrous ammonia service.

r. Approved pressure gauges and stop valves must be installed on the suction and discharge sides of the compressor.

s. An approved date current pressure relief valve of sufficient capacity must be installed on the discharge side of the compressor prior to any shutoff valve.

t. Locks and lock boxes must be installed on the main system stop ~~valve~~ valves, when the facility is unattended.

u. The system must be leak free in operation.

v. Adequate provisions for protection of exposed piping and appurtenances from moving vehicles at the facility must be in place.

w. Loading platforms or other equivalent method must be used to allow safe filling of nurse tanks. Climbing on tires is not permitted for filling nurse tanks.

x. For facilities installed after January 1, 1998, ~~a~~ bleeder ~~valve~~ valves must be installed at truck unloading stations to relieve pressure prior to connecting or disconnecting the truck transfer ~~hose~~ hoses. The bleeder ~~hose~~ hoses must be vented to a suitable closed water container.

y. Excess flow protection is required for nurse tank filling station risers to shut down ammonia flow should a transfer hose break or a pull-away occur. Storage facilities utilizing bulkheads with emergency shutoff valves below the bulkhead must install the required excess flow valves integral with the riser shutoff valves or as in-line excess flow valves. For these systems, an approved installed location cable must be used between the emergency shutoff valve actuator and the riser shutoff valve. Storage facilities utilizing breakaway devices with positive closure must install excess flow valves integral with the riser shutoff valve or as an approved in-line excess flow valve installed prior to the positive closure device. The installer must verify the operation of any excess flow valve covered by this section. The effective date of this section is July 1, 2006.

4. **Requirements for safety equipment:**

a. The following personal safety equipment must be available at a readily accessible location:

(1) Two full face gas masks with spare date current ammonia canisters;

(2) One pair of protective gloves impervious to ammonia;

(3) Chemical splash goggles that are ANSI Z87.1-1989 rated;

(4) One pair of protective boots impervious to ammonia;

(5) One "slicker suit" impervious to ammonia;

(6) Safety shower or open container holding at least one hundred fifty gallons [567.8 liters] of clean water; and

(7) Adequate fire extinguishers.

b. A telephone, or other method of communication, is required to be on location at each anhydrous ammonia storage facility during transfer operations.

History: Effective July 1, 1996; amended effective April 1, 1998; June 1, 2005.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-06. Specific requirements for nurse tanks.

1. The ASME manufacturer's data report must be provided, if requested by the chief boiler inspector, should repairs or alterations become necessary.

2. The container must be ASME constructed, if installed after November 1, 1987.

3. The container must be national board registered, if installed after November 1, 1987. For secondhand storage containers, a manufacturer's data report must be furnished to the chief boiler inspector if the container is not national board registered.

4. The data plate must be readable and not painted over or obscured.

5. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.

6. Container markings and decals must meet the requirements of ANSI K61.1:

   a. "1005" department of transportation decal must be in place on sides and heads.

   b. "ANHYDROUS AMMONIA" decal must be in place on sides and heads.

c. "INHALATION HAZARD" decal must be in place on each side.

d. Legible transfer and safety decals must be in place.

7. The container must be numbered or otherwise identified.

8. A department of transportation-approved slow moving vehicle sign must be in place and in good condition.

9. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection code and the proper documentation must be available for inspection if requested by the chief boiler inspector.

10. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.

11. A container liquid level gauge must be installed and must be operable.

12. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.

13. Container safety valves must be ASME and national board stamped.

14. Container safety valves must be date current and in operable condition.

15. Container safety valves must have rain caps in place.

16. The transfer hose, if installed, must be date current and not be weather checked or cut to expose the cords. If the transfer hose is not installed on the nurse tank, ~~a record of the age, condition, and user of the transfer hose must be maintained at the office of the facility~~ an approved male "ACME" type fitting with protective dust cap must be installed on the liquid withdrawal valve.

17. An "ACME" type fitting must be used to secure the transfer hose.

18. Protective gloves and Z87 rated goggles must be in a safety kit attached to the container or assigned to each nurse tank when the container is filled. If the gloves and goggles are assigned, a record of this assignment must be maintained at the office of the facility.

19. Five gallons [18.93 liters] of clean water in a container must be carried on the nurse tank.

20. A hydrostatic relief valve or approved built-in hydrostatic relief must be installed at the main liquid stop valve. This hydrostatic relief valve must be date current and equipped with a rain cap.

21. Protective caps must be in place for the main liquid and vapor connections.

22. Excess flow valves must be in place on the liquid and vapor connections at the tank. Excess flow valves may be incorporated into the main stop valves on the tank.

23. The wagon tires must be in a safe and serviceable condition, with no cords showing.

24. The wagon must be equipped with two suitable safety chains and a hitch pin.

25. The wagon tongue and undercarriage must be in a condition to provide safe transport.

26. The pressure vessel and appurtenances must be leak free in service.

27. Fittings and safety valves must be protected from physical damage, such as rollover, by roll cages or other protective devices.

28. An implement of husbandry may be fabricated from steel having a specified tensile strength not to exceed seventy-five thousand pounds per square inch [517110 kilopascals].

History: Effective July 1, 1996; amended effective April 1, 1998; June 1, 2005.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

7-12-01-08. Alternate procedures for transferring anhydrous ammonia directly from cargo tanks to nurse tanks.

1. Cargo tanks must have current United States department of transportation certification and container labeling and proof of such certification must be furnished to the agriculture commissioner initially and within thirty days of the recertifications required by the department of transportation.

2. Adequately sized wheel chocks must be used to prevent movement of both nurse tanks and cargo tanks prior to the start of any transfer operations.

3. Cargo tanks must have all safety equipment required by ANSI K61.1 - 1989:

a. At least five gallons [18.93 liters] of clean water in a container;

b. One pair of protective gloves impervious to ammonia;

c. A full facepiece gas mask with an ammonia canister and at least one spare canister; and

d. Chemical splash goggles.

4. Nurse tanks must be equipped with all safety equipment required by ANSI K61.1 - 1989:

a. At least five gallons [18.93 liters] of clean water in a container;

b. A legible decal depicting step-by-step ammonia transfer instructions; and

c. A legible decal depicting first-aid procedures to follow if injured by ammonia.

5. Transfer operations must take place:

a. Only on firm, well-prepared, level surfaces;

b. Only during daylight hours, or with proper lighting;

c. Only on the owner's or consignee's own property, to include rented or leased property;

d. At least fifty feet [15.24 meters] from the line of any adjoining property which may be built upon, or any highway or railroad mainline;

e. At least four hundred fifty feet [137.16 meters] from any place of public assembly or residence;

f. At least seven hundred fifty feet [228.6 meters] from any institutional residence; and

g. No closer than one mile [1.61 kilometers] from any city limits.

6. Transfer operations that transfer anhydrous ammonia directly from a bulk delivery vehicle to a separate cargo tank not connected to a truck are prohibited. Transfer operations must be from the bulk delivery vehicle directly to nurse tanks.

7. Initial written notification of intent to transfer anhydrous ammonia from any cargo tank to nurse tanks shall be given to the agriculture

commissioner, the board of county commissioners, and the county emergency manager in the county in which transfer operations will take place. This notification must thereafter be made on a seasonal basis, prior to March first for the spring-summer season and September first for the fall season. This notification must be made by the owner or the consignee.

~~7.~~ 8. Any additional requirements of the local jurisdiction (county and township) must be complied with fully.

History: Effective July 1, 1996; amended effective April 1, 1998; June 1, 2005.
General Authority: NDCC 19-20.2-01
Law Implemented: NDCC 19-20.2-01

TITLE 8

STATE BOARD OF ARCHITECTURE

FEBRUARY 2005

CHAPTER 8-01-01

8-01-01-01. Organization of board of architecture.

1. **History.** The 1917 legislative assembly passed architectural practice legislation which is codified as North Dakota Century Code chapter 43-03. This chapter requires the governor to appoint a state board of architecture~~. The board, generally speaking, has two purposes, namely, to protect the public against incompetent and unscrupulous practice, and to recognize and respect the right of the qualified practitioner to a means of livelihood.~~:

   a. To adopt rules to govern its proceedings.

   b. For the examination of candidates for registration.

   c. For the regulation of the practice of architecture and landscape architecture. The board's purpose is to protect the public health, safety, and welfare against incompetent and unscrupulous practice.

   d. The 2003 legislative assembly enacted landscape architectural registration laws codified in North Dakota Century Code chapter 43-03. This chapter requires the state board of architecture to appoint a landscape architect advisory committee and architect advisory committee to assist in the implementation and coordination of landscape architects' regulation. The committee must consist of three landscape architects and three architects.

2. **Board membership.** The board consists of three members appointed by the governor. A member must be an architect registered in North Dakota who has been a resident of, and in active practice as a principal in, this state for at least three years prior to appointment.

3. **Terms of office.** Each member is appointed for a term of six years, with terms arranged so that one term expires on March fourteenth of each odd-numbered year.

4. **Qualifications and removal.** Each member qualifies by taking the oath of office required of civil officers. The governor may remove a member for inefficiency or neglect of duty.

5. **Officers.** The board elects a president and secretary, who shall also be treasurer, at a regular meeting each year.

6. **Secretary-treasurer's duties.** The secretary-treasurer:

   a. Records all business of the board at its meetings and keeps all records.

   b. Collects all fees, deposits all moneys to the board account, and makes all disbursements for board expenses.

   c. Receives all applications for registration and examinations, receives and answers all correspondence, and maintains files of all communications received and sent, including copies of those by other members.

   d. Maintains a roster of current registrants and annually publishes and distributes the roster to all registrants and to other persons and agencies as the board determines.

7. **Board records - Seal.**

   a. Records. Records are open to the public when information is of a general nature. Records and correspondence of a personal nature concerning an individual or firm, such as examination documents, correspondence, financial disclosures, and the like, are confidential and are available only to the board, its counsel, and to the individual or firm itself.

   b. Seal. The board has adopted a seal for its ~~own~~ use~~, with the words "Seal of North Dakota State Board of Architecture" inscribed thereon. The secretary has custody of the seal~~. The seal is affixed to certificates of registration, renewal cards, and legal documents, over signatures of the members.

8. **Meetings.** The board holds regular meetings on the first Monday of April and October each year. Special meetings may be held as necessary. Postponement, when necessary, is agreed to by at least two members, and is to a date certain.

   a. Notice. The secretary shall notify each member in writing at least five days in advance of any special meeting. Should an applicant or other person wish to be present at a special meeting, a request shall be made in writing to the secretary or other member, in time

for the secretary to give at least ten days' notice to the applicant or other person.

b. Quorum. A quorum shall consist of two members.

c. Presiding officer. The president shall preside at all meetings. In the president's absence, the senior member present shall preside.

d. Open meetings. All meetings shall be open to the public.

e. When meetings not required. Routine business, such as review of applications for registration, may be conducted by mail, when it is in the applicant's and the public's interest. Copies of all correspondence relating to any business conducted outside meetings shall be filed with the secretary.

9. **Compensation of members and expenses of board.**

a. Limit. The expenditures of the board shall at no time exceed the amount of moneys on deposit to the credit of the board.

b. Audit. The board accounts shall be audited annually by an independent auditing firm whose members are authorized by law to perform auditing services in North Dakota, and a report of the audit shall be furnished to all members of the board and filed in accordance with state law.

c. Separate fund - vouchers. All fees and other income collected by the board shall be deposited by the secretary-treasurer in a separate account in a bank authorized to do business in North Dakota. The account shall be drawn against only for expenses of the board, upon properly drawn vouchers signed by the secretary-treasurer.

d. Secretary's salary - members' per diem. The secretary's salary shall be fixed by board resolution at a regular meeting. The other members shall receive twenty-five dollars per day, or portion thereof, spent in discharge of their duties when away from their practices.

e. Travel and other expenses. Each member shall receive such travel and other actual expenses as are legitimately incurred in the performance of official duties. Official duties shall include board meetings, attendance as delegates to regional and national meetings of the national council of architectural registration boards, meetings with other professional boards, meetings at which candidates for registration are examined, and whenever attendance of board members is required by a court or other

higher authority. Actual expenses incurred by board members for telephone, postage, and the like, in their official duties, shall be reimbursed as provided in subdivision c.

f. Other expenses. The secretary-treasurer shall pay office rental, stenographic, legal, auditing, printing, and all other legitimate expenses of the board from board funds.

10. **Counsel.** The board may, at its expense, employ as legal counsel an attorney who has been admitted to practice in North Dakota. When approved and appointed by the attorney general as "special assistant attorney general", the board attorney shall represent that office in all matters relating to the regulation of the practice of architecture~~,~~ and landscape architecture within the scope of North Dakota Century Code chapter 43-03.

11. **Inquiries.** Inquiries regarding the board, registration, examinations, or practice shall be addressed to the secretary~~.~~ at the following address:

State Board of Architecture
P.O. Box 7370
Bismarck, ND 58507-7370

History: Amended effective October 1, 1989; February 1, 2005.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 28-32-02.1

CHAPTER 8-02-01

8-02-01-01. Practice. The practice of architecture and landscape architecture exists for the performance of personal services to the public by architects and landscape architects. It has as its premise the duty of the architect to employ the architect's training, experience, and skill in the design and execution of buildings and their environments in order to safeguard life, health, and property and to promote the public welfare. The latter includes the application of ~~esthetic~~ aesthetic principles to the technology of building.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-02-01-02. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 43-03, except:

1. "Architect" means, in general, a person who has qualified by skill, training, experience, and professional attitude to practice architecture, and is registered as an architect. Specifically, architect means an architect registered, and thereby entitled to practice architecture, in North Dakota.

2. "Architectural commission" means the employment of an architect to perform architectural services.

3. "Architectural project" means a building, or group of buildings, or a portion thereof, together with the site, the design, planning, or improvement of which requires the services of an architect.

4. "Architectural services" means those services normally and customarily performed by an architect including, but not limited to:

   a. Offering or solicitation of, and contracting for, architectural services.

   b. Consultation, investigation, analysis, studies, reports, programming, designing, and planning of buildings and their environments.

   c. Sketches, drawings, specifications, and other graphic instruments of service in connection with architectural projects.

   d. Observation of construction of architectural projects, together with other duties of the architect normally associated with administration of contracts for construction.

   Architectural services include the structural and environmental systems and equipment which are essential to the proper functioning of an architectural project.

5. "Business corporation" means a corporation which is chartered under statutes other than North Dakota Century Code chapter 10-31~~, and is thereby not authorized to practice architecture~~.

6. ~~"Design-build firm" means a firm engaged in construction, or having an affiliate engaged in construction, which offers or provides to the public architectural services and construction as a "package". Also known as "package builders", design-build firms are considered to be contractors, and are not authorized to perform architectural services.~~ "CLARB" means the council of landscape architectural registration boards, of which the board is a member.

7. "CLARB certificate" means certification by CLARB that a landscape architect has met the minimum standards of education, examination, experience, and professional conduct established by the council and is thereby recommended for licensure in all member jurisdictions.

8. "CLARB council record" means verified documentation of an individual's education, experience, examination, licensure, and professional conduct compiled by CLARB.

9. "CLARB standards of eligibility" means standards for education, experience, examination, and professional conduct that are approved by CLARB's member boards and recommended to all member boards as the minimum standards for licensure.

10. "CLARB written examination" means the licensure examination for landscape architects prepared by CLARB.

~~7.~~ 11. "Exemptions" means persons to whom the provisions of this title and North Dakota Century Code chapter 43-03 do not apply.

12. "Landscape architect" means, in general, a person who has qualified by skill, training, experience, and professional attitude to practice landscape architecture and is registered as a landscape architect. Specifically, landscape architect means a landscape architect registered and thereby entitled to practice landscape architecture in North Dakota.

13. "Landscape architectural project" means the site, the design, planning, or improvement of which requires the services of a landscape architect.

14. "Landscape architecture" means a service in which landscape architectural education, training, and experience and the application of mathematical, physical, and social science principles are applied in consultation, evaluation, planning, design, and administration of contracts relative to projects principally directed at the functional and aesthetic use and preservation of land. The term includes performing any professional service in connection with the development of land

areas where the dominant purpose of the service is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches, or environment for structures or other improvements, and the consideration and determination of inherent problems of the land relating to erosion, wear and tear, blight, and hazards. This practice includes the location and arrangement of tangible objects and features incidental and necessary to the purposes outlined but does not include the design of structures or facilities with separate and self-contained purposes, as ordinarily included in the practice of engineering or architecture, or the preparation of boundary surveys or final land plats, as ordinarily included in the practice of land surveying.

~~8.~~ 15. "NCARB" means the national council of architectural registration boards, of which the board is a member.

~~9.~~ 16. "Nonarchitect principal" means a professional ~~engineer~~ registered in North Dakota who is either a general partner in a partnership or a director in a professional ~~service~~ corporation which is engaged in the practice of architecture ~~and engineering~~.

~~10.~~ 17. "Practice" means the performance of, or offer to perform, architectural services, or landscape architectural services, for the public.

~~11.~~ 18. "Principal" means an architect who is either a sole proprietor, a general partner in a partnership, or a director in a professional service corporation, and such firm is engaged in the practice of architecture. "Principal" also means an architect who shares in the losses as well as the profits of the firm, and controls, alone or in concert with other architects who are principals, the architectural practice of the firm.

~~12.~~ 19. "Professional ~~service~~ corporation, professional limited liability company, or professional limited liability partnership" means ~~a corporation~~ an entity chartered under North Dakota Century Code chapter 10-31 to engage in the practice of architecture~~, or the practice of both architecture and engineering~~.

~~13.~~ 20. "Reciprocity" means the process by which the board grants registration without further examination to a person who is registered to practice architecture in another state or jurisdiction, and who holds national council of architectural registration board certification, or to a person who is registered to practice landscape architecture in another state or jurisdiction and who holds council of landscape architectural registration board certification.

~~14.~~ 21. "Registration" means a license issued by the board to a person who has qualified as an architect, or landscape architect, and is thereby entitled to practice.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-02-02

8-02-02-06. Exemptions. Nothing in this chapter shall be construed to prevent:

1. Preparation of plans, drawings, and specifications for public buildings costing less than the amount stipulated in North Dakota Century Code section 48-01.1-04 or buildings for the use of the North Dakota agricultural experiment station under the provisions of North Dakota Century Code section 48-01.1-04.

2. The preparation of submissions to architects by the manufacturer, supplier, or installer of materials, assemblies, components, or equipment incidental to the design of the entire project that describe or illustrate the use of such items.

3. The preparation of any details or shop drawings required of the contractor by the terms of the construction documents.

4. The management of construction contracts by persons customarily engaged in contracting work.

5. The preparation of technical submissions or the administration of construction contracts by persons acting under the responsible control of a registered architect.

6. Officers and employees of the United States of America from engaging in the practice of architecture as employees of the United States of America.

7. A partnership, limited liability company, or professional corporation from performing or holding itself out as able to perform any of the services involved in the practice of architecture; provided that any agreement to perform such services shall be executed on behalf of the partnership, limited liability company, or professional corporation by the general partner or partners, or by the manager or managers, or by the director or directors who hold registration in this state and who will exercise responsible control over the particular services contracted for by the partnership, limited liability company, or professional corporation; and provided further that the partnership, limited liability company, or professional corporation furnishes the board with such information about its organization and activities as the board shall require by regulation. "Managers" shall mean the members of a limited liability company in which management of its business is vested in the members and the managers of a limited liability company in which management of its business is vested in one or more managers.

8. A partnership (including a registered limited liability partnership), limited liability company, or professional corporation from offering a

combination of services involved in the practice of architecture and construction services provided that:

a. A registered architect or person otherwise permitted under subsection 9 to offer architectural services participates substantially in all material aspects of the offering;

b. There is written disclosure at the time of the offering that a registered architect is engaged by and contractually responsible to such partnership, limited liability company, or professional corporation;

c. Such partnership, limited liability company, or professional corporation agrees that the registered architect will have responsible control of the work and that such architect's services will not be terminated without the consent of the person engaging the partnership, limited liability company, or professional corporation; and

d. The rendering of architectural services by such registered architect will conform to the provisions of North Dakota Century Code chapter 43-03 and the rules adopted under that chapter.

9. A nonresident, who holds the certification issued by the national council of architectural registration boards, or the council of landscape architectural registration boards, from offering to render the professional services involved in the practice of architecture, or landscape architecture; provided that the person shall not perform any of the professional services involved in the practice of architecture or landscape architecture until registered as hereinbefore provided; and further provided that the person notifies the board in writing that the person holds an NCARB or CLARB certificate and is not currently registered in the jurisdiction, but will be present in North Dakota for the purpose of offering to render architectural or landscape architectural services; the person will deliver a copy of the notice referred to in this subsection to every potential client to whom the applicant offers to render architectural or landscape architectural services; and the person promises to apply immediately to the board for registration if selected as the architect or landscape architect for the project.

10. A person, who holds the certification issued by the national council of architectural registration boards, or the council of landscape architectural registration boards, but who is not currently registered in the jurisdiction, from seeking an architectural, or landscape architectural, commission by participating in an architectural or landscape architectural design competition for a project in North Dakota; provided that the person notifies the board in writing that the person holds an NCARB or CLARB certificate and is not currently registered in the jurisdiction, but will be present in North Dakota for the

purpose of participating in an architectural or landscape architectural design competition; the person will deliver a copy of the notice referred to in this subsection to every person conducting an architectural or landscape architectural design competition in which the applicant participates; and the person promises to apply immediately to the board for registration if selected as the architect or landscape architect for the project.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-02

CHAPTER 8-02-03

8-02-03-01. Practicing without a license. A person who, in violation of North Dakota Century Code section 43-03-09, practices architecture or landscape architecture without registration is guilty of an illegal practice.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-09

8-02-03-02. Illegal use of the term "architect". A person who, in violation of North Dakota Century Code section 43-03-10, falsely professes to be an architect or landscape architect is guilty of an illegal practice.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-10

8-02-03-04. Plan stamping. An architect who affixes, or permits the affixing of, the architect's name or stamp to drawings or other instruments of service not prepared under the architect's ~~direct~~ responsible control and supervision is guilty of an illegal practice.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-22

8-02-03-05. Captive architect. An architect or landscape architect who is an employee and not a principal of a firm which is controlled by persons who are not architects or landscape architects, and which offers and performs architectural or landscape architectural services illegally, on the pretext that such practice is legal because it employs an architect or landscape architect, is guilty of an illegal practice.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-02-03-06. Conflict of interest. An architect or landscape architect who knowingly engages in personal or business activities which are in conflict with the responsibilities to the architect's or landscape architect's client or to the public, without fully disclosing the circumstances of such conflict of interest and obtaining approval of such activities, is guilty of an illegal practice.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-02-04

8-02-04-01. Practice in the public interest. An architect or landscape architect shall always practice with the health, safety, and welfare interests of the public taking precedence over all other considerations~~, including those of a client~~.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-02-04-03. Due care. An architect or landscape architect shall exercise due care and diligence in all aspects of the architect's practice in order to safeguard the client and the public insofar as possible against inconvenience or loss due to errors or omissions. An architect or landscape architect shall at all times maintain close control over all services for which the architect is contractually responsible, including those assigned to consultants.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-02-04-04. Limitations of practice - Use of consultants. An architect or landscape architect shall assume only those duties and responsibilities which are normally considered as architectural or landscape architectural services, and shall not offer or perform services which are normally, and by law, required to be performed by other professions. An architect or landscape architect is expected to employ consultants for any services when, in the architect's or landscape architect's judgment, they will be performed more competently by consultants, and it is in the client's and the public's interests. An architect or landscape architect also shall be expected to exercise careful judgment in the architect's or landscape architect's selection of consultants, in order to provide the best possible services, for which the architect or landscape architect will be held responsible.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-01

8-03-01-02. Requirements for practice by firms. In any firm, control of the firm's architectural or landscape architectural practice shall be always the sole responsibility of the architect or landscape architect principals, in order for the firm to legally perform architectural or landscape architectural services or offer them to the public. Similarly, membership in a firm shall in no way be permitted to remove, or reduce, an architect's or landscape architect's responsibilities to the public, as an individual registered to practice architecture or landscape architecture.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-10

8-03-01-03. Prohibited types of firms. Any firm in which the ~~ownership or~~ control is vested in persons who are not registered as architects or landscape architects, or in which ~~ownership or~~ control can be transferred to unregistered persons, is prohibited from practicing, or offering to practice, architecture or landscape architecture in North Dakota. ~~Such firms shall include contracting firms, design-build firms, firms employing captive architects, engineering firms, business corporations, and any firms which fail to meet the requirements of section 8-03-01-02.~~

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-10

CHAPTER 8-03-02

8-03-02-01. Architect or landscape architect partners. In a partnership of architects or landscape architects, each partner shall be registered, in accordance with North Dakota Century Code section 43-03-10.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-10

8-03-02-02. Other professions. An architect or landscape architect shall not enter into a partnership with persons of other professions, unless such persons are registered in North Dakota in their respective professions.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-10

8-03-02-03. Practice requirements. In a partnership of architects or landscape architects and other professionals, responsibility and control of practice in the separate professions shall rest with the individuals so registered, and no partner shall practice, or offer to practice, the other, unless the partner also is registered in the other profession.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-03

8-03-03-01. Purpose. Under North Dakota Century Code chapter 10-31, incorporation of architects, and architects or landscape architects and ~~professional engineers~~ other professionals in joint practice, is authorized. The law provides safeguards against control of practice by nonregistrants, while permitting practitioners the advantages of incorporation. ~~It is the only form of incorporation by architects, or by architects and professional engineers, permitted in North Dakota.~~

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 10-31-04, 43-03-08

CHAPTER 8-03-04

8-03-04-01. Business corporations ~~not permitted~~. ~~So-called "business~~ Business corporations~~"~~, and any other form of incorporation which does not require that ~~ownership and~~ control rest exclusively with the architect ~~(or architects and engineers)~~, are not permitted to ~~a firm engaged~~ engage in the practice of architecture or landscape architecture in North Dakota.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 10-31-04, 43-03-08

8-03-04-02. Other states. Architects or landscape architects registered in other states or jurisdictions in which incorporation meeting the basic requirements of North Dakota Century Code chapter 10-31 is unavailable to them may be required by the board to practice as individuals in order to be registered in North Dakota. See article 8-04.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-05

8-03-05-01. Types permitted. Any type of group practice, or firm, that ensures that architectural or landscape architectural services will be offered to, and performed for, the public by and under the control of architects or landscape architects, is permitted. Such forms of firm, or group practice, as joint ventures, associations, or other entities, whether formal or informal, permanent or temporary, are permitted whenever the provisions of this title or of North Dakota Century Code chapter 43-03 are not violated.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-06

8-03-06-01. Responsible ~~charge concept~~ control. In accordance with the concept in the law that architecture or landscape architecture is a personal service to the public, it is mandatory that an architect or landscape architect who is also a principal be in responsible charge of practice at all times~~, as required by section 8-02-02-03~~.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-03-07

8-03-07-01. When required. The board may require as a condition to registration the disclosure by any applicant of the applicant's employment by, or affiliation with, a firm, in order to establish facts of ownership, control, and practice. Disclosure~~, as above,~~ may also be required as a condition to renewal of registration, and shall also require the applicant to state under oath whether the applicant has practiced architecture or landscape architecture in North Dakota during the period since such registration was revoked.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-11, 43-03-13, 43-03-15

CHAPTER 8-04-01

8-04-01-02. Adoption of NCARB standards. The current standards for qualification for architects on the basis of education~~, training~~ and experience, as adopted by the national council of architectural registration boards ~~and published as Circular of Information No. 1~~, shall be considered as the qualifications for registration for architects in North Dakota, except as amended in this chapter.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-13

8-04-01-03. ~~Amendments to~~ NCARB ~~standards~~ record. ~~F-20 evaluation criteria, under 1, the definition of "principal" is hereby amended to include the criteria for sharing in losses and profits which is stated in subsection 6 of section 8-02-01-02.~~ An architectural applicant is required to show evidence of the applicant's qualifications for either examination, or registration, by having NCARB compile a council record and having NCARB furnish such record to the board. The board may require such additional information, or the architectural applicant's appearance before the board, as necessary to clearly establish the architectural applicant's eligibility for examination or registration.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-13

8-04-01-04. ~~Availability~~ Adoption of CLARB standards. ~~Copies of Circular of Information No. 1 are available from the National Council of Architectural Registration Boards, 1735 New York Avenue N.W., Washington, D.C.~~ Beginning January 1, 2005, the standards for qualification for landscape architects on the basis of education, training, and experience are the requirements established by the most recent CLARB standards of eligibility.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-04-01-05. ~~NCARB~~ CLARB record. ~~An applicant is required to show evidence of the applicant's qualifications for either (1) examination, or (2) registration, by having the national council of architectural registration boards compile a "council record" and having the council furnish such record to the board. The types of council records and their purposes are fully explained in Circular of Information No 1. The board may require such additional information, or applicant's appearance before the board, as necessary to clearly establish the applicant's eligibility for examination or registration.~~ A landscape architectural

applicant is required to show evidence of the applicant's qualifications for either examination or registration by having CLARB furnish such record to the board.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-04-02

8-04-02-01. Application for architectural examination. ~~Candidates~~ Architectural candidates for examination shall apply to the national council of architectural registration boards, requesting the council's North Dakota ~~Application Form No. 308~~ application form and instructions for preparation of a council record. The appropriate fees, including the statutory fee for examination and registration, together with additional fees charged by the council payable to the national council of architectural registration boards, and to the board, shall accompany this application. The national council of architectural registration boards will notify the architectural applicant of the applicant's eligibility to be admitted to the examinations, after evaluating the applicant's record. The architectural applicant shall remit to the national council of architectural registration boards an additional fee for preparation of the record, if applicable.

History: Amended effective February 1, 1983; February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-04-02-02. Application for registration by NCARB certificate holders. ~~Applicants~~ Architectural applicants must hold the national council of architectural registration boards certification as a prerequisite for registration. An architectural applicant for registration shall apply to the national council of architectural registration boards, requesting transmittal of the applicant's council record to the board. The appropriate fees, including the statutory fee for examination and registration, together with additional fees charged by the council payable to the national council of architectural registration boards shall accompany the application. An architectural applicant shall pay any additional fees required by the national council of architectural registration boards for such purposes as updating of records, or reinstatement of lapsed certification, if applicable.

History: Amended effective February 1, 1983; February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-04-02-03. Applicants not holding NCARB certification. ~~Applicants~~ Architectural applicants who do not hold the national council of architectural registration boards certification shall be required to obtain certification in order to be registered in North Dakota. The procedure shall be similar to that for an architectural applicant for examination, except that, in many instances, an examination will not be necessary in order to establish certification.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-04-02-04. Application for landscape architectural examination. Candidates for landscape architectural examination beginning January 1, 2005, shall submit an application to the board and include a council record provided

through the council of landscape architectural registration boards. If the landscape architectural applicant has not passed the licensure examination, the applicant shall apply to the council of landscape architectural registration boards to complete the examination process.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-04-02-05. Acceptance for landscape architectural registration to December 31, 2006. Candidates for landscape architectural examination for the period from January 1, 2005, to December 31, 2006, shall be accepted for the council of landscape architectural registration boards examination regardless of education or experience.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-04-02-06. Exemption from CLARB certification. Any person who applies for licensure as a landscape architect in North Dakota up to December 31, 2006, has successfully completed the council of landscape architectural registration boards landscape architectural licensing examination prior to that date or has a current landscape architectural license in another state, shall be considered to meet the requirements for a land architectural license in North Dakota in lieu of council of landscape architectural registration boards certification and regardless of education or experience. The candidate shall submit an application and application fee to the board.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-04-03

8-04-03-01. Prerequisite NCARB certification. An architectural applicant desiring registration by reciprocity shall hold the national council of architectural registration boards certification in addition to registration in the applicant's home state ~~(~~or other jurisdiction~~)~~. Both registration and certification shall be current, in good standing, and verified by the architectural applicant's council record. The architectural applicant shall apply to the council, following the procedures outlined in chapter 8-04-02 and paying the required fees. ~~An applicant for reciprocal registration may be required to state under oath whether the applicant has practiced architecture in North Dakota prior to the date of application for registration.~~

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-15

8-04-03-02. ~~Practice pending registration~~ Prerequisite CLARB certification. ~~The board may, at its discretion, permit an applicant for reciprocal registration to perform architectural services for a specific project prior to the granting of registration, provided that the following conditions prevail:~~

~~1. Applicant has not practiced without registration prior to the applicant's application.~~

~~2. Applicant has not violated any other provisions of this title or of North Dakota Century Code chapter 43-03.~~

~~3. Applicant does not attempt to practice, and does not solicit or accept commissions for other than the specified project before registration is granted.~~

~~The board shall immediately revoke such permission upon evidence that the applicant has not complied with the above conditions, and shall deny the applicant's registration. The board shall take whatever further action is warranted.~~ A landscape architectural applicant who is licensed in another jurisdiction shall submit a landscape architect application to the board. Such landscape architect application shall include a council certificate furnished by CLARB and include the required application fee.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-15

CHAPTER 8-04-04

8-04-04-02. Notice to registrant. The secretary shall notify a registrant by ~~certified~~ mail at least thirty days prior to the date of renewal. The notice shall be directed to the last known address of the registrant. Revocation of registration for nonpayment of fees shall not be carried out unless ~~such notice has been given~~ the registrant has received a followup notification by certified mail.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-19

CHAPTER 8-04-05

8-04-05-02. Causes for revocation. The board may, upon notice and hearing, revoke the registration of an architect or landscape architect for the causes stated in North Dakota Century Code sections 43-03-19 and 43-03-20.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-19, 43-03-20

8-04-05-03. Charges or complaints - Procedure. A member of the board, a practitioner, or the public may file a complaint or charge regarding practice of architecture or landscape architecture in North Dakota. In each instance, the board shall proceed as follows:

1. All charges or complaints alleging or implying violations of law or of the provisions of this title shall be referred to the board's counsel, with instructions to investigate. Typically, such investigation will include a request by letter for information, addressed to the person or persons accused, with copies to all members. Upon receipt of a reply, the board's counsel will recommend to the board what action, if any, the board should take.

2. Charges or complaints of a minor or routine nature may, at the discretion of the board, be assigned to the secretary. Typically, such assignment will be a written inquiry, explanation, or warning to the person or persons accused, with copies of all correspondence to the other members.

3. Any person against whom charges or complaints of a serious nature, in the opinion of counsel, are filed shall be properly notified by the board or its counsel as to the nature of the allegations, the person's legal rights, including right to a hearing before the board, and upon resolution of the matter, any action on, or dismissal of, the charges or complaints.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-20

CHAPTER 8-05-02

8-05-02-01. Architect - General. An applicant for registration as an architect may be admitted to the examinations upon evidence that the applicant's education~~, training,~~ and experience meets the standards ~~contained in the current edition of~~ established by the national council of architectural registration boards ~~Circular of Information No. 1, and~~, which are ~~hereby~~ adopted by the board in accordance with North Dakota Century Code section 43-03-13. Such evidence shall be established by the applicant's council record.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-13

8-05-02-04. Landscape architect - General. An applicant for registration as a landscape architect may be admitted to the examination upon evidence that the applicant's education and experience meets the current standards established by the council of landscape architectural registration boards, which are hereby adopted by the board in accordance with North Dakota Century Code chapter 43-03-13. Such evidence shall be established by the applicant's council record.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-13

8-05-02-05. Requirements for CLARB certification. The board shall not require a landscape architect whose original registration in North Dakota was granted prior to adoption of the requirements of the council of landscape architectural registration boards certification to be reexamined or to qualify for such certification as a condition for renewal of the person's registration.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-13

CHAPTER 8-05-03

8-05-03-01. Purpose. The uniform examinations prepared by the national council of architectural registration boards and the council of landscape architectural registration boards, which have been adopted by the board, have as their purpose the establishment of uniform standards of qualification for registration in all states and jurisdictions, in order to unify reciprocal procedures.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-14

CHAPTER 8-05-04

8-05-04-01. Former examinations. Architects who were registered originally by passing examinations formulated by the board, or by the national council of architectural registration boards ~~seven-part~~ examinations which did not include testing of such subjects as seismic design, and who desire to be registered in another state or jurisdiction, may be required to qualify for the council certification. ~~See Circular of Information No. 1.~~

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-14

8-05-04-02. "Home" state of registration. The board may admit an architectural applicant to the examinations who is a resident of another state or jurisdiction only in cases of hardship and with the written approval of the applicant's "home" registration board and the national council of architectural registration boards. ~~Applicants who reside in North Dakota and who have successfully completed portions of their examination requirements elsewhere must likewise obtain permission of both boards and the council in order to be admitted to the examinations in North Dakota.~~

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08, 43-03-14

8-05-04-03. Examination information. More detailed information concerning examinations, time to apply, procedures, and the like~~,~~ are obtainable from the ~~secretary~~ board.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-06-01

8-06-01-01. Issuance and use. Upon registration, the board shall issue each architect and landscape architect a rubber stamp which shall contain such wording as may be designated and authorized by the board. ~~All~~ The title sheet of drawings ~~and~~, specifications, or technical submissions, or any combination of those items, intended for the construction of an architectural or landscape architectural project shall be ~~stamped and signed on the title sheet of such drawings and specifications, by the architect under whose supervision, direction and control these instruments were prepared~~ imprinted by the stamp or facsimile. The architect or landscape architect under whose responsible control these instruments were prepared shall manually sign each original imprint of the seal.

History: Amended effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-22

ARTICLE 8-07

RULES OF PROFESSIONAL CONDUCT

~~[No Rules Promulgated]~~

CHAPTER 8-07-01
COMPETENCE

8-07-01-01. Standard of care and competence. In engaging in the practice of architecture or landscape architecture, a registered architect or landscape architect shall act with reasonable care and competence and shall apply the technical knowledge and skill which are ordinarily applied by registered architects or landscape architects of good standing practicing in the same locality.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-01-02. Compliance with applicable laws and regulations. In designing a project, a registered architect or landscape architect shall take into account all applicable state and municipal building laws and regulations. While a registered architect or landscape architect may rely on the advice of other professionals, (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, a registered architect or landscape architect shall not knowingly design a project in violation of such laws and regulations.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-01-03. When professional services may be performed. A registered architect or landscape architect shall undertake to perform professional services only when the architect or landscape architect, together with those whom

the registered architect or landscape architect may engage as consultants, is qualified by education and experience in the specific technical areas involved.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-07-02
CONFLICT OF INTEREST

8-07-02-01. Compensation from more than one party prohibited. A registered architect or landscape architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to in writing by all interested parties.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-02-02. Disclosure of interest required. If a registered architect or landscape architect has any business association or direct or indirect financial interest which is substantial enough to influence the person's judgment in connection with the performance of professional services the registered architect or landscape architect shall fully disclose in writing to the person's client or employer, or both, the nature of the business association or financial interest. If the client or employer objects to such association or financial interest, the registered architect or landscape architect shall either terminate such association or interest or offer to give up the commission or employment.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-02-03. Compensation for specifying or endorsing products prohibited. A registered architect or landscape architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-02-04. Impartiality in interpreting documents required. When acting as the interpreter of building contract documents and the judge of contract

performance, a registered architect shall render decisions impartially, favoring neither party to the contract.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-07-03
FULL DISCLOSURE

8-07-03-01. Disclosure of compensation for public statements. A registered architect or landscape architect, making public statements on architectural or landscape architectural questions, shall disclose when the person is being compensated for making such statements.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-03-02. Accurate representation of qualifications and responsibility. A registered architect or landscape architect shall accurately represent to a prospective or existing client or employer the person's qualifications and the scope of the person's responsibility in connection with work for which the person is claiming credit.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-03-03. Duties regarding known code violations. If, in the course of work on a project, a registered architect or landscape architect becomes aware of a decision taken by the person's employer or client, against such registered architect's or landscape architect's advice, which violates applicable state or municipal building laws and regulations and which will, in the registered architect's or landscape architect's judgment, materially and adversely affect the safety to the public of the finished project, the registered architect or landscape architect shall:

1. Report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations;

2. Refuse to consent to the decision; and

3. When the registered architect or landscape architect reasonably believes that other such decisions will be taken, notwithstanding the

person's objection, terminate the person's services with respect to the project.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-03-04. Deliberate false statements prohibited. A registered architect or landscape architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with the person's application for a registration or renewal thereof.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-03-05. Assistance to unqualified applicant prohibited. A registered architect or landscape architect shall not assist the application for registration of an individual known by the registered architect to be unqualified in respect to education, experience, or character.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-03-06. Duty to report violations. A registered architect or landscape architect possessing knowledge of a violation of the rules of professional conduct shall report such knowledge to the board.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-07-04
COMPLIANCE WITH LAWS

8-07-04-01. Violations of criminal law prohibited. An architect or landscape architect shall not, in the conduct of the person's architectural or landscape architectural practice, knowingly violate any state or federal criminal law.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-04-02. Payment or gift to government officials prohibited. An architect or landscape architect shall neither offer nor make any payment or gift to an elected or appointed government official with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect or landscape architect is interested.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-04-03. Compliance with registration laws required. An architect or landscape architect shall comply with the registration laws and regulations governing the person's professional practice in any United States jurisdiction.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

CHAPTER 8-07-05
PROFESSIONAL CONDUCT

8-07-05-01. Responsible control required. Each office maintained for the preparation of drawings, specifications, reports, or other professional work shall have an architect or landscape architect resident and regularly employed in that office having responsible control of such work.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-05-02. Sign or seal on documents. An architect or landscape architect shall not sign or seal drawings, specifications, reports, or other professional work for which the person does not have responsible control; provided, however, that in the case of the portions of such professional work prepared by the architect's or landscape architect's consultants, registered under this or another professional registration law of this jurisdiction, the architect or landscape architect may sign or seal that portion of the professional work if the architect or landscape architect has reviewed such portion, has coordinated its preparation, and intends to be responsible for its adequacy.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-05-03. Gifts to influence clients prohibited. An architect or landscape architect shall neither offer nor make any gifts, other than gifts of nominal value including, for example, reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect or landscape architect is interested.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

8-07-05-04. Fraud. An architect or landscape architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

History: Effective February 1, 2005.
General Authority: NDCC 43-03-08
Law Implemented: NDCC 43-03-08

TITLE 25

STATE BOARD OF FUNERAL SERVICE

APRIL 2005

CHAPTER 25-02-01

25-02-01-07. Serving of food and alcoholic beverages. The serving of food or alcoholic beverages to the public in connection with or in conjunction with any part of the funeral service operation shall ~~be prohibited~~ comply with all state and local laws and regulations.

History: Amended effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06
Law Implemented: NDCC 43-10-05, 43-10-06

CHAPTER 25-02-02

25-02-02-01. Application for license. An application for license to practice funeral service shall be made on a form provided by the board. The application shall contain the person's full name, age, place of residence, recent photograph, and any other information required by the board. The application shall be accompanied by a fee of ~~seventy-five~~ one hundred dollars which shall entitle the applicant to examination of the state rules and laws, by the required transcripts, and by affidavits of at least two reputable residents of the county in which the applicant resides or proposes to engage in the practice of funeral service to the effect that the applicant is of good moral character.

History: Amended effective March 1, 1985; May 1, 1993; May 1, 1998; April 1, 2005.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-11, 43-10-13

25-02-02-04. License renewal, late renewal.

1. **Date of renewal.** The license to practice funeral service shall be issued for one year and may be renewed by the board by submitting a completed renewal application, verification of completion of the continuing education required by chapter 25-02-03, and the renewal fee of ~~seventy-five~~ one hundred dollars. The board may refuse to renew the license for cause. The executive secretary of the board shall notify each holder of a license to practice funeral service thirty days prior to the renewal date. A retired funeral practitioner ~~who has been licensed by the board for fifty or more years~~ may be given ~~a paid up~~ an honorary ~~membership~~ certificate as long as the funeral practitioner is not engaged in the active practice of funeral service.

2. **Late renewal.** A license which has been expired may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board, verification of completion of the continuing education required by chapter 25-02-03, and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within thirty days after its expiration, the licensee shall pay a late fee of one hundred fifty dollars. A license which is not renewed within three years after its expiration may not be renewed thereafter.

History: Amended effective July 1, 1983; March 1, 1985; May 1, 1993; May 1, 1998; April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-06.2, 43-10-13, 43-10-15, 43-10-15.1

CHAPTER 25-02-03
CONTINUING EDUCATION

25-02-03-01. Continuing education requirement. A funeral practitioner applying for license renewal must complete four contact hours of approved continuing education in the year preceding renewal. The requirement of continuing education is effective beginning with applications for renewal submitted in 2005. A new funeral practitioner is not required to complete continuing education before the first full year of licensure. Continuing education must be approved before it is earned. A contact hour is fifty minutes. Continuing education must be a minimum of one contact hour. Contact hours must be earned and reported in increments of full contact hours. The board is not responsible for the cost of or providing continuing education.

History: Effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-05, 43-10-06.2

25-02-03-02. General standards for approval. To be approved, continuing education must:

1. Constitute an organized program of learning, except as provided by subsection 2 of section 25-02-03-03.

2. Reasonably be expected to advance the knowledge and skills of a funeral practitioner.

3. Pertain to subjects that directly relate to funeral service.

4. Be conducted by individuals who have education, training, and experience by reason of which they are considered experts concerning the subject matter, except as provided by subsection 2 of section 25-02-03-03.

5. Be presented by a sponsor who has a mechanism to verify participation and maintains attendance records for three years, except as provided by subsection 2 of section 25-02-03-03.

6. Not be a product information program provided by a supplier.

7. Not be insurance continuing education required by North Dakota Century Code section 26.1-26-31.1.

History: Effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-05, 43-10-06.2

25-02-03-03. Standards for approval of activities. The following activities may be approved continuing education if they meet the standards provided by section 25-02-03-02:

1. A funeral practitioner may earn an unlimited number of contact hours for participation in the following:

   a. Educational programs of conferences, lectures, panel discussions, workshops, seminars, and symposiums.

   b. Home study courses that require the participant to successfully demonstrate the participant's knowledge following completion of the course.

   c. Teaching an approved continuing education course. Contact hours may not be earned for teaching the same course more than once in any year.

2. A funeral practitioner may earn a maximum of two contact hours in any year for supervision of a registered intern embalmer. Funeral practitioners must maintain a log listing the name of each intern embalmer supervised and the specific dates and hours supervised.

Entertainment, recreation, employment orientation, holding an office or service as an organization delegate, meetings for the purpose of making policy, noneducational association meetings, and private employee training programs will not be approved continuing education.

History: Effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-05, 43-10-06.2

25-02-03-04. Approval of continuing education. To meet the continuing education requirement of section 25-02-03-01, the continuing education must be approved before it is earned. Continuing education will be approved if one of the following requirements is met:

1. An application for approval is made and the continuing education meets the standards provided by sections 25-02-03-02, 25-02-03-03, and 25-02-03-04.

2. The continuing education is provided by an organization approved by the board.

3. The continuing education is approved by the government agency responsible for licensing funeral practitioners in another state and is directly related to funeral service.

History: Effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-05, 43-10-06.2

25-02-03-05. Reporting continuing education. A funeral practitioner shall report continuing education with the application for renewal on a form provided by the board. The report shall include, if applicable, all of the following concerning the continuing education:

1. The title.

2. A description.

3. The sponsor, presenter, or author.

4. The location and dates of attendance.

5. The number of contact hours earned.

6. A verification of attendance. Sufficient verification is one of the following:

   a. A certificate of attendance or completion from the sponsor, presenter, or author.

   b. A statement that the funeral practitioner attended or completed the continuing education signed by the sponsor, presenter, author, or a designee.

7. The log required by subsection 2 of section 28-02-03-04.

8. The funeral practitioner's signed affirmation that the information provided is true and correct.

History: Effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-05, 43-10-06.2

25-02-03-06. Waiver and extension. Upon written application of a funeral practitioner, the board may waive or extend the time to complete continuing education for extreme hardship.

History: Effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-05, 43-10-06.2

CHAPTER 25-03-01

25-03-01-01. Funeral establishment license.

1. **Application for license.** An application for licensing of a funeral establishment must be made on a form provided by the board and be accompanied by a fee of ~~seventy-five~~ one hundred dollars.

2. **License renewal.** A funeral establishment license must be issued for one year and may be renewed by the board by submitting to the board a completed renewal application and the renewal fee of ~~seventy-five~~ one hundred dollars.

3. **Change of owner, supervising personnel, funeral home name, or location.** A funeral home license shall not be transferred from one owner to another. The new owner shall submit an application for a new license to the executive secretary of the board, accompanied by a fee of ~~seventy-five~~ one hundred dollars. The funeral home license is issued in conjunction with a North Dakota funeral service license. Should the licensee signing the funeral home license application no longer be associated with the funeral home, the licensee shall notify the board. No funeral home license shall be valid unless the funeral home is under the supervision of a funeral practitioner. A change in the licensed personnel supervising the funeral home or funeral home name or location shall require a new funeral home license.

History: Amended effective July 1, 1983; May 1, 1993; May 1, 1998; April 1, 2005.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05, 43-10-22

CHAPTER 25-05-01

25-05-01-01. Licensure of crematoriums. An application to license a crematorium must be made on a form provided by the board and include the application fee of ~~seventy-five~~ one hundred dollars. The license is good for a period of one year~~,~~ and may be renewed by submitting a renewal application and the renewal fee of ~~seventy-five~~ one hundred dollars.

History: Effective May 1, 1993; amended effective May 1, 1998; April 1, 2005.
General Authority: NDCC 43-10-05~~, 43-10-25~~
Law Implemented: NDCC 43-10-05, 43-10-25

CHAPTER 25-06-01

25-06-01-01. Licensure of branch facilities. An application to license a branch facility shall be made on a form provided by the board and include the application fee of ~~thirty-five~~ fifty dollars. The license is good for a period of one year~~,~~ and may be renewed by submitting a renewal application and the renewal fee of ~~thirty-five~~ fifty dollars.

History: Effective May 1, 1993; amended effective May 1, 1998; April 1, 2005.
General Authority: NDCC 43-10-05
Law Implemented: NDCC 43-10-05, 43-10-22

CHAPTER 25-08-02

25-08-02-01. Unprofessional conduct. A licensee or intern embalmer may not engage in or permit others under the licensee's supervision or employment to engage in unprofessional conduct. Unprofessional conduct includes:

1. Harassing, abusing, or intimidating a customer or a customer's family;

2. Using profane, indecent, or obscene language within the immediate hearing of the family or relatives of the deceased;

3. Failure to treat with dignity and respect the body of the deceased, any member of the family or relatives of the deceased, any employee, or any other person encountered while within the scope of practice;

4. Habitual overindulgence in the use of or dependence on intoxicating liquors, prescription drugs, over-the-counter drugs, illegal drugs, or any other mood-altering substances that substantially impair a person's work-related judgment or performance;

5. Intentionally misleading or deceiving any customer in the sale of any goods or services provided by the licensee;

6. Knowingly making a false statement in the procuring, preparation, or filing of any required permit;

7. Knowingly making a false statement on a certificate of death;

8. Conviction of an offense that has a direct bearing upon that individual's ability to provide professional services or for which it is determined the individual is not sufficiently rehabilitated;

9. Misrepresentation or fraud;

10. Solicitation, after death or while death is impending, for business by the licensee, or by the agents, assistants, or employees of the licensee. This subsection does not prohibit general advertising;

11. Gross immorality;

12. Aiding or abetting an unlicensed person to practice funeral service;

13. Refusing to surrender promptly the custody of a dead human body upon the express order of a person lawfully entitled to its custody;

14. Gross negligence or gross incompetency in the practice of funeral service; ~~or~~

15. Knowingly violating any state or federal laws regarding funeral service; or

16. Failing to complete the continuing education required by chapter 25-02-03.

History: Effective May 1, 1998; amended effective April 1, 2005.
General Authority: NDCC 43-10-05, 43-10-06.2
Law Implemented: NDCC 43-10-05, 43-10-06.2, 43-10-16

TITLE 33

STATE DEPARTMENT OF HEALTH

FEBRUARY 2005

CHAPTER 33-15-12

33-15-12-01.1. Scope. Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60, as they exist on January 31, ~~2002~~ 2004, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-12-02. Standards of performance.

Subpart A - General provisions.

*60.2. The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the ~~department and the~~ administrator of the United States environmental protection agency.

Subpart C - Emission guidelines and compliance times.

Subpart Cc - Emissions guidelines and compliance times for municipal solid waste landfills.

Designated facilities to which this subpart applies shall comply with the requirements for state plan approval in 40 CFR parts 60.33c, 60.34c, and 60.35c, except that quarterly surface monitoring for methane under

part 60.34c shall only be required during the second, third, and fourth quarters of the calendar year.

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.

2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.

3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.

4. Complete onsite construction or installation of the air pollution control device or devices or process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.

5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.

6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

Subpart Ce - Emission guidelines and compliance times for hospital/medical/infectious waste incinerators.

Except as noted below, designated facilities to which this rule applies shall comply with the minimum requirements for state plan approval listed in subpart Ce.

*60.32e(i) The following is added:

Title V permit to operate applications shall be submitted by September 15, 1999.

*60.39e(a) is deleted in its entirety.

*60.39e(b) is deleted in its entirety and replaced with the following:

(b) Except as provided in paragraphs c and d of this section, designated facilities shall comply with all requirements of this subpart within one year of the United States environmental protection agency's approval of the state plan for hospital/medical/infectious waste incinerators regardless of whether a designated facility is identified in the state plan. Owners or operators of designated facilities who will cease operation of their incinerator to comply with this rule shall notify the department of their intention within six months of state plan approval.

*60.39e(c) is deleted in its entirety and replaced with the following:

(c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the state plan, but not later than September 16, 2002, provided the facility owner or operator complies with the following:

1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.

2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device within nine months of state plan approval.

3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.

4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.

5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.

6. Begins initiation of site preparation for installation of the air pollution control device within twenty-two months after state plan approval.

7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.

8. Starts up the air pollution control device within twenty-eight months after state plan approval.

9. Notifies the department of the performance test thirty days prior to the test.

10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.

11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.

*60.39e(d) is deleted in its entirety and replaced with the following:

1. Designated facilities petitioning for an extension of the compliance time in paragraph b of this section shall:

   i. Within six months after the United States environmental protection agency's approval of the state plan, submit documentation of the analyses undertaken to support the need for more than one year to comply, including an explanation of why up to three years after United States environmental protection agency approval of the state plan is sufficient to comply with this subpart while one year is not. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

   ii. Documentation of measurable and enforceable incremental steps of progress to be taken toward compliance with this subpart.

2. The department shall review any petitions for the extension of compliance times within thirty days of receipt of a complete petition and make a decision regarding approval or denial. The department shall notify the petitioner in writing of its decision within forty-five days of the receipt of the petition. All extension approvals must include incremental steps of progress. For those sources planning on installing air pollution control equipment to comply with this subpart, the incremental steps of progress included in 40 CFR 60.39e(c) shall be included as conditions of approval of the extension.

3. Owners or operators of facilities which received an extension to the compliance time in this subpart shall be in compliance with the

applicable requirements on or before the date three years after United States environmental protection agency approval of the state plan but not later than September 16, 2002.

*60.39e(f) is deleted in its entirety.

After the compliance dates specified in this subpart, an owner or operator of a facility to which this subpart applies shall not operate any such unit in violation of this subpart.

Subpart D - Standards of performance for fossil-fuel fired steam generators for which construction is commenced after August 17, 1971.

Subpart Da - Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978.

Subpart Db - Standards of performance for industrial-commercial-institutional steam generating units.

Subpart Dc - Standards of performance for small industrial-commercial-institutional steam generating units.

Subpart E - Standards of performance for incinerators.

Subpart Ea - Standards of performance for municipal waste combustors for which construction is commenced after December 20, 1989, and on or before September 20, 1994.

Subpart Ec - Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996.

Subpart F - Standards of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart H - Standards of performance for sulfuric acid plants.

Subpart I - Standards of performance for hot mix asphalt facilities.

Subpart J - Standards of performance for petroleum refineries.

Subpart K - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

*60.110(c) is deleted in its entirety and replaced with the following:

(c) Any facility under part 60.110(a) that commenced construction, reconstruction, or modification after July 1, 1970, and prior to May 19, 1978, is subject to the requirements of this subpart.

Subpart Ka - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984.

Subpart Kb - Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

Subpart L - Standards of performance for secondary lead smelters.

Subpart M - Standards of performance for secondary brass and bronze production plants.

Subpart N - Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973.

Subpart Na - Standards of performance for secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983.

Subpart O - Standards of performance for sewage treatment plants.

Subpart P - Standards of performance for primary copper smelters.

Subpart Q - Standards of performance for primary zinc smelters.

Subpart R - Standards of performance for primary lead smelters.

Subpart S - Standards of performance for primary aluminum reduction plants.

Subpart T - Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

Subpart U - Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

Subpart V - Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

Subpart W - Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

Subpart X - Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

Subpart AA - Standards of performance for steel plants: electric arc furnaces: constructed after October 21, 1974, and before August 17, 1983.

Subpart AAa - Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

Subpart BB - Standards of performance for kraft pulp mills.

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

Subpart EE - Standards of performance for surface coatings of metal furniture.

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

Subpart KK - Standards of performance for lead-acid battery manufacturing plants.

Subpart LL - Standards of performance for metallic mineral processing plants.

Subpart MM - Standards of performance for automobile and light-duty truck surface coating operations.

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

Subpart QQ - Standards of performance for the graphic arts industry: publication rotogravure printing.

Subpart RR - Standards of performance for pressure-sensitive tape and label surface coating operations.

Subpart SS - Standards of performance for industrial surface coating: large appliances.

Subpart TT - Standards of performance for metal coil surface coating.

Subpart UU - Standards of performance for asphalt processing and asphalt roofing manufacture.

Subpart VV - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in the synthetic organic chemicals manufacturing industry.

Subpart WW - Standards of performance for the beverage can surface coating industry.

Subpart XX - Standards of performance for bulk gasoline terminals.

Subpart AAA - Standards of performance for new residential wood heaters.

Subpart BBB - Standards of performance for the rubber tire manufacturing industry.

Subpart CCC - [Reserved]

Subpart DDD - Standards of performance for volatile organic compound (VOC) emissions for the polymer manufacturing industry.

Subpart EEE - [Reserved]

Subpart FFF - Standards of performance for flexible vinyl and urethane coating and printing.

Subpart GGG - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in petroleum refineries.

Subpart HHH - Standards of performance for synthetic fiber production facilities.

Subpart III - Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

Subpart JJJ - Standards of performance for petroleum drycleaners.

Subpart KKK - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions from onshore natural gas processing plants.

Subpart LLL - Standards of performance for onshore natural gas processing; SO_2 emissions.

Subpart NNN - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

Subpart OOO - Standards of performance for nonmetallic mineral processing plants.

Subpart PPP - Standards of performance for wool fiberglass insulation manufacturing plants.

Subpart QQQ - Standards of performance for volatile organic compound (VOC) emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

Subpart SSS - Standards of performance for magnetic tape coating facilities.

Subpart TTT - Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

Subpart UUU - Standards of performance for calciners and dryers in mineral industries.

Subpart VVV - Standards of performance for polymetric coating of supporting substrates facilities.

Subpart WWW - Standards of performance for municipal solid waste landfills.

Subpart AAAA - Standards of performance for small municipal waste combustion units for which construction is commenced after August 30, 1999, or for which modification or reconstruction is commenced after June 6, 2001.

Subpart CCCC - Standards of performance for commercial and industrial solid waste incineration units for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001.

Subpart DDDD - Emission guidelines and compliance times for commercial and industrial solid waste incinerator units that commenced construction on or before November 30, 1999.

Except as provided below, designated facilities to which this rule applies shall comply with 40 CFR 60.2575 through 60.2875, including tables 1 through 5.

In the rule, you means the owner or operator of a commercial or industrial solid waste incineration unit.

Table 1 of the rule is deleted and replaced with the following:

Table 1 to Subpart DDDD - Model Rule Increments of Progress and Compliance Schedules	
Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2 - Final compliance	Three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate changes.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner's manual.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-13

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on January 31, ~~2002~~ 2004, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 2002; February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-13-01.2. Emission standards.

Subpart A - General provisions.

*61.02 - The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the ~~department and the~~ administrator of the United States environmental protection agency.

The following definition is added:

"Waiver of compliance" means a permit to operate with a compliance schedule.

*Sections 61.07 and 61.08 are deleted in their entirety and replaced with the following:

Application for permit to construct. The owner or operator of any new source to which a standard prescribed under these subparts is applicable, prior to the date on which construction or modification is planned to commence, shall apply for and receive a permit to construct as provided in section 33-15-14-02. For those sources on which construction or modification has commenced and initial startup has not occurred prior to the effective date of a standard of this chapter, the owner or operator shall apply for a permit to construct within thirty days after the effective date of the standard.

Neither the submission of an application for a permit to construct nor the administrator's approval of construction or modification shall:

(1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this chapter or of any other applicable federal, state, or local requirement; or

(2) Prevent the administrator from implementing or enforcing this chapter or taking any other action under this article.

*61.09(b) is deleted in its entirety.

*61.11(f) is deleted in its entirety and replaced with the following:

(f) The granting of a permit under this section does not abrogate the department's authority under section 33-15-01-06 and subsection 9 of section 33-15-14-02, and subsection 6 of section 33-15-14-03.

*61.16 is deleted in its entirety and replaced with the following:

Availability of information.

a. Emission data provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter must be available to the public.

b. Any records, reports, or information, other than emission data, provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter must be available to the public, except that upon a showing satisfactory to the department by any person that such records, reports, or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the department will consider such records, reports, or information, or particular part thereof, confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such records, reports, or information, or particular part thereof, may be disclosed to other officers, employees, or authorized representatives of the state and federal government concerned with carrying out the provisions of North Dakota Century Code chapter 23-25 or when relevant in any proceeding under North Dakota Century Code chapter 23-25.

*61.17 is deleted in its entirety.

Subpart C - National emission standard for beryllium.

Subpart D - National emission standard for beryllium rocket motor firing.

Subpart E - National emission standard for mercury.

Subpart F - National emission standard for vinyl chloride.

Subpart G - [Reserved]

Subpart J - National emission standard for equipment leaks (fugitive emission sources) of benzene.

Subpart L - National emission standard for benzene emissions from coke byproduct recovery plants.

Subpart N - National emission standard for inorganic arsenic emissions from glass manufacturing plants.

Subpart O - National emission standard for inorganic arsenic emissions from primary copper smelters.

Subpart P - National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities.

Subpart S - [Reserved]

Subpart U - [Reserved]

Subpart V - National emission standard for equipment leaks (fugitive emission sources).

Subpart Y - National emission standard for benzene emissions from benzene storage vessels.

Subpart BB - National emission standard for benzene emissions from benzene transfer operations.

Subpart FF - National emission standard for benzene waste operations.

Appendix A - National emission standards for hazardous air pollutants, compliance status information.

Appendix B - Test methods.

Appendix C - Quality assurance procedures.

History: Effective June 1, 1992; amended effective March 1, 1994; August 1, 1995; April 1, 1998; February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-13-02. Emission standard for asbestos.

1. **Applicability**. The provisions of this section are applicable to those sources specified in subsections 3 through 17.

2. **Definitions**. All terms that are used in this section and are not defined below are given the same meaning as in North Dakota Century Code chapter 23-25 and in section 33-15-13-01.2.

   a. "Active waste disposal site" means any disposal site other than an inactive site.

   b. "Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted; however, the absence of visible emissions is not sufficient evidence of being adequately wet.

   c. "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

   d. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, operation and maintenance, handling, or disposal of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.

   e. "Asbestos abatement project designer" means any person who develops the plans, specifications, and designs for an asbestos abatement project.

   f. "Asbestos abatement project monitor" means any person, employed to monitor an asbestos removal project to ensure any of the following:

      (1) The removal is conducted in accordance with state and federal regulations.

      (2) State-of-the-art work practices are employed.

      (3) The abatement is conducted as designed.

      (4) Personal and ambient air samples are collected properly.

      Persons acting as the project designer who are not responsible for the proper collection of personal and ambient air samples and

employees of the asbestos removal contractor or facility owner are excluded from this definition.

g. "Asbestos abatement supervisor" means any person employed by the asbestos contractor who supervises workers engaged in asbestos removal, encapsulation, enclosure, and repair. Supervisors may include those individuals with the position title of foreman, working foreman, or leadman pursuant to collective bargaining agreements.

h. "Asbestos-containing waste material" means asbestos mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this section. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term includes regulated asbestos-containing material waste and materials contaminated with asbestos, including disposable equipment and clothing.

i. "Asbestos contractor" means any partnership, firm, association, operation, or sole proprietorship that contracts to perform asbestos abatement for another.

j. "Asbestos inspector" means any person who inspects facilities for asbestos-containing materials.

k. "Asbestos management planner" means any person who develops facility plans for the management of asbestos-containing materials.

l. "Asbestos mill" means any facility engaged in converting, or in any intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of asbestos materials is not considered a part of the asbestos mill.

m. "Asbestos tailings" means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.

n. "Asbestos waste from control devices" means any waste material that contains asbestos and is collected by a pollution control device.

o. "Asbestos worker" means an employee or agent of an asbestos contractor, or a public employee engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their private residence.

p. "Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering,

and asphalt roofing products containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.

q. "Category II nonfriable asbestos-containing material" means any material, excluding category I nonfriable asbestos-containing material, containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40,Code of Federal Regulations, part 763, section 1, polarized light microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by mechanical forces expected to act on the material.

r. "Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

s. "Cutting" means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

t. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility, together with any related handling operations or the intentional burning of any facility.

u. "Emergency renovation operation" means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

v. "Encapsulation" means a method of asbestos abatement that includes the treatment of asbestos-containing materials with a sealant material that completely surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers. A bridging encapsulant creates a membrane over the surface while a penetrating encapsulant penetrates the material and binds the material's components together.

w. "Enclosure" means a method of asbestos abatement that includes the construction of a permanent, airtight, impermeable barrier around asbestos-containing material to prevent the release of asbestos fibers into the air.

x. "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

y. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to this section is not excluded, regardless of its current use or function.

z. "Facility component" means any part of a facility including equipment.

aa. "Friable asbestos-containing material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry. The term includes nonfriable asbestos-containing material after such previously nonfirable material becomes damaged to the extent that when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure. The percentage of asbestos is determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy. If the asbestos content is greater than zero percent, assume the material contains greater than one percent asbestos or verify the asbestos content by point counting using polarized light microscopy. If a result obtained by point count is different from a result obtained by visual estimation, the point count result will be used.

bb. "Fugitive source" means any source of emissions not controlled by an air pollution control device.

cc. "Glove-bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove-bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the occupational safety and health administration's (OSHA's) final rule on occupational

exposure to asbestos, appendix G, title 29, Code of Federal Regulations, 1926.58.

dd. "Grinding" means to reduce to powder or small fragments and includes mechanical chipping or drilling.

ee. "In poor condition" means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

ff. "Inactive waste disposal site" means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

gg. "Inspection" means any activity undertaken in a school building, or a public or commercial building, to determine the presence or location, or to assess the condition of, friable or nonfriable asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and nonfriable, known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

(1) Periodic surveillance of the type described in title 40, Code of Federal Regulations, 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

(2) Inspections performed by employees or agents of federal, state, or local governments solely for the purpose of determining compliance with applicable statutes or regulations; or

(3) Visual inspections of the types described in title 40, Code of Federal Regulations, 763.90(I), solely for the purpose of determining completion of response actions.

hh. "Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

ii. "Leaktight" means that solids or liquids cannot escape or spill out. It also means dusttight.

jj. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of

asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operations, or any other preventable upset conditions, equipment breakdown, or process failure.

kk. "Manufacturing" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos, with any other materials, including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

ll. "Natural barrier" means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes, or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

mm. "Nonfriable asbestos-containing material" means any material containing more than one percent asbestos as determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces expected to act on the material.

nn. "Nonscheduled renovation operation" means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

oo. "Outside air" means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open ferry dock.

pp. "Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operations, or both.

qq. "Particulate asbestos material" means finely divided particles of asbestos or material containing asbestos.

rr. "Planned renovation operations" means a renovation operation, or a number of such operations, in which some regulated asbestos-containing material will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such

operations can be predicted to occur during a given period of time based on operating experience.

ss. "Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than ten units or detached single-family homes. The term includes, industrial and office buildings, residential apartment buildings and condominiums of ten or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses, and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

tt. "Public employee" for the purpose of this chapter means any person employed by the United States government or the state of North Dakota or any of its political subdivisions who provides service for which compensation is paid. This includes employment by appointment or election.

uu. "Regulated asbestos-containing material (RACM)" means:

(1) Friable asbestos material.

(2) Category I nonfriable asbestos-containing material that has become friable.

(3) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading.

(4) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces acting on or expected to act on the material in the course of demolition or renovation operations regulated by this section.

vv. "Remove" means to take out regulated asbestos-containing material or facility components that contain or are covered with regulated asbestos-containing material from any facility.

ww. "Renovation" means altering in any way a facility or facility components, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

xx. "Repair" means returning damaged asbestos-containing materials to an undamaged condition or to an intact state so as to prevent asbestos fiber release.

yy. "Resilient floor covering" means asbestos-containing floor tile, including asphalt and vinyl floor tiles and sheet vinyl floor covering containing more than one percent asbestos as determined using polarized light microscopy according to the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.

zz. "Roadways" means surfaces on which motor vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

aaa. "Strip" means to take off regulated asbestos-containing material from any part of any facility or facility components.

bbb. "Structural member" means any member of a facility, such as beams, walls, ceilings, floors, etc.

ccc. "Visible emissions" means any emissions which are visually detectable without the aid of instruments, coming from regulated asbestos-containing material or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operations. This does not include condensed uncombined water vapor.

ddd. "Waste generator" means any owner or operator of a source covered by this section whose act or process produces asbestos-containing waste material.

eee. "Waste shipment record" means the shipping document, required to be originated and signed by the waste generator and is used to track and substantiate the disposition of asbestos-containing waste material.

fff. "Working day" means any day Monday through Friday and includes holidays that fall on any day Monday through Friday.

3. **Standard for asbestos mills.**

a. Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by subsection 13 to clean emissions containing asbestos material before they escape to, or are vented to, the outside air.

b. Each owner or operator of an asbestos mill shall meet the following requirements:

(1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air-cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.

(2) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that can not be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(a) Maintenance schedule.

(b) Recordkeeping plan.

(3) Maintain records of the results of visible emissions monitoring and air-cleaning device inspections using a suitable form which includes the following information:

(a) Date and time of each inspection.

(b) Presence or absence of visible emissions.

(c) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(d) Presence of dust deposits on clean side of fabric filters.

(e) Brief description of corrective actions taken including date and time.

(f) Daily hours of operation for each air-cleaning device.

(4) Furnish upon request and make available at the affected facility during normal business hours for inspection by the department all records required under this subdivision.

(5) Retain a copy of all monitoring inspection records for at least two years.

(6) Submit quarterly a copy of visible emissions monitoring records to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.

4. **Standard for roadways**. No person may surface a roadway with asbestos tailings or asbestos-containing waste material.

5. **Standard for manufacturing**.

a. Applicability. This section applies to the following manufacturing operations using commercial asbestos.

(1) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.

(2) The manufacture of cement products.

(3) The manufacture of fireproofing and insulating materials.

(4) The manufacture of friction products.

(5) The manufacture of paper, millboard, and felt.

(6) The manufacture of resilient floor covering.

(7) The manufacture of paints, coatings, caulks, adhesives, and sealants.

(8) The manufacture of plastics and rubber materials.

(9) The manufacture of chlorine utilizing asbestos diaphragm technology.

(10) The manufacture of shotgun shell wads.

(11) The manufacture of asphalt concrete.

b. Standard. Each owner or operator of any of the manufacturing operations to which this section applies shall either:

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by subsection 13 to clean emissions containing asbestos material from these operations before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air-cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emission to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.

(4) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(a) Maintenance schedule.

(b) Recordkeeping plans.

(5) Maintain records of the results of visible emission monitoring and air-cleaning device inspections using a suitable form which includes the following information:

(a) Date and time of each inspection.

(b) Presence or absence of visible emissions.

(c) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(d) Presence of dust deposits on clean side of fabric filters.

(e) Brief description of corrective action taken, including date and time.

(f) Daily hours of operation for each air-cleaning device.

(6) Furnish upon request and make available at the affected facility during normal business hours for inspection by the department all records required under this subdivision.

(7) Retain a copy of all monitoring and inspection records for at least two years.

(8) Submit quarterly a copy of the visible emissions monitoring records to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.

6. **Standard for demolition and renovation.**

a. Applicability. To determine which requirements of subdivisions a, b, and c of this subsection apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility, or part of the facility where the demolition or renovation operation will occur, for the presence of asbestos, including category I and category II nonfriable asbestos-containing material. The requirements of subdivisions b and c of this subsection apply to each owner or operator of an asbestos demolition or renovation operation, including the removal of regulated asbestos-containing material, as follows:

(1) For a demolition or renovation project involving the stripping or removal of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of regulated asbestos-containing material, all the procedural requirements of subdivision c apply, except for ordered demolitions as provided in paragraph 4.

(2) For any facility being demolished, all the notification requirements of subdivision b apply.

(3) For a renovation project where at least one hundred sixty square feet [14.9 square meters] of regulated asbestos-containing material on facility components or at least two hundred sixty linear feet [79.3 meters] of regulated asbestos-containing material on pipes or a total of thirty-five cubic feet [1 cubic meter] of regulated asbestos-containing material on or off facility components are to be stripped, removed, dislodged, cut, drilled, or similarly disturbed at a facility all the notification requirements of subdivision b apply.

(a) To determine whether this paragraph applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount

of regulated asbestos-containing material to be removed or stripped over the maximum period of time a prediction can be made, not to exceed one calendar year of January first through December thirty-first.

(b) To determine whether this paragraph applies to emergency renovation operations, estimate the amount of regulated asbestos-containing material to be removed or stripped as a result of the sudden unexpected event that necessitated the renovation.

(4) If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of subdivision b and paragraphs 4, 5, 6, 7, and 8 of subdivision c apply.

(5) Owners or operators of demolition or renovation operations are exempt from the requirements of 61.05(a), 61.07, and 61.09 of the general provisions of this chapter.

b. Notification requirements. Each owner or operator to which this section applies shall:

(1) Provide the department with written notice of the intention to demolish or renovate.

(2) Indicate whether the notice is an original or a revised notification and update the notice as necessary, including when the amount of asbestos affected changes by at least twenty percent.

(3) Postmark or deliver the notice as follows:

(a) At least ten working days before demolition begins, except as provided in subparagraph b.

(b) As early as possible before, but not later than the following working day after, demolition begins if the operation is described in paragraph 4 of subdivision a or for an emergency renovation as described in subparagraph b of paragraph 3 of subdivision a of this subsection.

(c) At least ten working days before the end of the calendar year preceding the year for which notice is being given for renovations described in subparagraph a of paragraph 3 of subdivision a of this subsection.

(d) At least ten working days before renovation begins. When necessary, the department may accept a telephone notification followed by the written notification.

(e) In no event may an operation covered by this subsection begin on a date other than the date contained in the written notice unless the department has been supplied a properly amended notification following the timetables outlined above.

(4) Include the following information on a notification form provided by the department:

(a) Name, address, and telephone number of both the owner and operator and the asbestos removal contractor.

(b) Description of the facility or affected part of the facility being demolished or renovated, including the size, age, and prior and present use of the facility.

(c) An estimate of the amount of regulated asbestos-containing material to be removed from the facility in terms of square feet, linear feet, or cubic feet, as appropriate. Also estimate the approximate amount of category I and category II nonfriable asbestos-containing material in the affected part of the facility that will not be removed before demolition. Also provide the procedures and analytical methods used to detect the presence and determine the quantity of regulated asbestos-containing material and category I and category II nonfriable asbestos-containing material.

(d) Location of the facility being demolished or renovated to include the street address, city, county, and state.

(e) Scheduled starting and completion dates of the asbestos abatement work or any other activity that would break up, dislodge, or similarly disturb asbestos material.

(f) Scheduled starting and completion dates of the demolition or renovation.

(g) Type of operation: demolition or renovation.

(h) A description of the demolition or renovation work to be performed, including the demolition or renovation techniques and methods to be employed during the activity and a description of the affected facility components.

(i) Description of work practices and engineering controls to be used to comply with the requirements of this section, including asbestos removal and waste handling emission control procedures.

(j) The name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(k) The name, address, and telephone number of the waste transporter.

(l) For emergency renovations, provide the date and hour that the emergency occurred, a description of the sudden unexpected event, and an explanation of how the event caused an unsafe condition or would cause equipment damage or an unreasonable financial burden.

(m) Description of procedures to be followed in the event that unexpected regulated asbestos-containing material is found or category II nonfriable asbestos-containing material becomes crumbled, pulverized, or reduced to powder during the operation.

(n) For facilities described in paragraph 4 of subdivision a, the name, title, and authority of the state or local governmental representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order must be attached to the notification.

(o) A signed statement by the contractor that all asbestos abatement supervisors and asbestos workers assigned to this project are certified by the department, in accordance with subsection 16.

c. Procedures for asbestos emission control. Each owner or asbestos contractor to whom this subsection applies shall comply with the following procedures:

(1) Remove all regulated asbestos-containing material from a facility being demolished or renovated before any activity

begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing material need not be removed before demolition if:

(a) It is category I nonfriable asbestos-containing material that is not in poor condition and is not friable.

(b) It is on a facility component that is encased in concrete or other similarly hard material and adequately wetted whenever exposed during demolition and maintained wet until it is disposed of in accordance with subsection 11.

(c) It was not accessible for testing and therefore was not discovered before demolition began and the material cannot be safely removed. If not removed for safety reasons, these materials must be adequately wetted when exposed during demolition and maintained wet until they are disposed of in accordance with subsection 11.

(d) They are category II nonfriable asbestos-containing material and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(2) When a facility component that contains, is covered with, or is coated with regulated asbestos-containing material is being taken out of the facility as a unit or in sections:

(a) Adequately wet all regulated asbestos-containing material exposed during cutting or disjointing operations; and

(b) Carefully wrap or otherwise contain the facility member with an impermeable covering prior to the disjoining operation; and

(c) Carefully lower the units or sections to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the regulated asbestos-containing material.

(3) When regulated asbestos-containing material is being stripped from a facility component while it remains in place in a facility, adequately wet the material during the stripping operation.

(a) In renovation operations, wetting that would unavoidably damage equipment or present a safety hazard is not required if:

[1] The owner or operator has obtained prior written approval from the department based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

[2] The owner or operator uses one of the following emission control methods:

[a] A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air and be equipped with high efficiency particulate air filtration or be designed and operated in accordance with the requirements in subsection 13.

[b] A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

[c] Leaktight wrapping to contain all regulated asbestos-containing material prior to dismantlement.

(b) In renovation operations where wetting would result in equipment damage or a safety hazard and the methods allowed in subparagraph a of paragraph 3 of this subdivision cannot be used, another method may be used after obtaining written approval from the department based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph 3 of this subdivision.

(c) A copy of the department's written approval must be kept at the worksite and made available for inspection.

(4) After a facility component covered with, coated with, or containing regulated asbestos-containing material has been taken out of the facility as units or in sections pursuant to

paragraph 2 of this subdivision it must be kept contained in leaktight wrapping or:

(a) Adequately wet the regulated asbestos-containing material during stripping; or

(b) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air and be equipped with high-efficiency particulate air filtration or be designed and operated in accordance with the requirements in subsection 13.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs 2, 3, and 4 of this subdivision) the regulated asbestos-containing material is not required to be stripped if the following requirements are met:

(a) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material;

(b) The component is encased in a leaktight wrapping; and

(c) The leaktight wrapping is labeled according to subsection 11 during all loading and unloading operations and during storage.

(6) For all regulated asbestos-containing material, including material that has been removed or stripped:

(a) Adequately wet the material and ensure that it remains wet until collected for disposal in accordance with subsection 11;

(b) Carefully lower the materials to the ground or a lower floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material; and

(c) Transport the materials to the ground via leaktight chutes or containers if they have been removed or stripped more than fifty feet [15.24 meters] above ground level and were not removed as units or in sections.

Regulated asbestos-containing material contained in leaktight wrapping that has been removed in accordance

with paragraph 4 of this subdivision and subitem c of item 2 of subparagraph a of paragraph 3 of this subdivision need not be wetted.

(7) When the temperature at the point of wetting is below zero degrees Celsius [32 degrees Fahrenheit], the owner or operator:

(a) Need not comply with the wetting requirements of subparagraph a of paragraph 2 of subdivision c of subsection 4 and paragraph 3 of this subdivision. The owner or operator shall comply with the other requirements in this subdivision; and

(b) Remove facility components containing, coated with or covered with friable asbestos materials as units or in sections to the maximum extent possible; and

(c) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records. These records must be available for inspection by the department during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least two years.

(8) No regulated asbestos-containing material may be stripped, removed, or otherwise handled or disturbed at a facility regulated by this subsection unless at least one onsite representative such as a supervisor, foreman or management level person, or other authorized representative who has completed the supervisor training requirements of subparagraph a of paragraph 2 and paragraph 4 of subdivision b of subsection 16 is present. Evidence that the required training has been completed shall be posted and made available for inspection by the department at the demolition or renovation site.

(9) For facilities described in paragraph 4 of subdivision a, adequately wet the portion of the facility that contains friable asbestos materials during the wrecking operation.

(10) If a facility is demolished by intentional burning, all regulated asbestos-containing material, including category I and category II nonfriable asbestos-containing material must be removed in accordance with this subsection before burning.

(11) When a demolition or renovation project that involves the disturbance of regulated asbestos-containing material is conducted in the ambient air, the owner or operator shall designate the boundaries of the work area by appropriate means.

7. **Standard for spraying.** The owner or operator of an operation in which asbestos-containing materials are spray-applied shall use only those materials that contain one percent asbestos or less for spray-on application.

8. **Standard for fabricating.**

a. Applicability. This subsection applies to the following fabricating operations using commercial asbestos:

(1) The fabrication of cement building products.

(2) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.

(3) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions, and ceilings for marine construction; and flow control devices for the molten metal industry.

b. Standard. Each owner or operator of any of the fabricating operations to which this subsection applies shall:

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air-cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.

(4) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential

for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include at a minimum, the following:

(a) Maintenance schedule.

(b) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air-cleaning device inspections using a suitable form which includes the following information:

(a) Date and time of each inspection.

(b) Presence or absence of visible emissions.

(c) Condition of fabric filters, including the presence of any tears, holes, and abrasions.

(d) Presence of dust deposits on clean side of fabric filters.

(e) Brief description of corrective actions taken, including date and time.

(f) Daily hours of operation for each air-cleaning device.

(6) Furnish upon request and make available at the affected facility during normal business hours, for inspection by the department, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least two years.

(8) Submit quarterly a copy of the visible emission monitoring record to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.

9. **Standard for insulating materials.** No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this subsection do not apply to spray-applied insulating materials regulated under subsection 7.

10. **Standard for waste disposal for asbestos mills**. Each owner or operator of any source covered under the provisions of subsection 3 shall:

a. Deposit all asbestos-containing waste material at department-approved waste disposal sites operated in accordance with the provisions of subsection 15.

b. Discharge no visible emissions to the outside air from the transfer of asbestos waste from control devices to the tailings conveyor, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with subdivision b of subsection 11 or subdivision c of this subsection.

c. Discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of any asbestos-containing waste material, or use one of the disposal methods as follows:

(1) Use a wetting agent as follows:

(a) Adequately mix all asbestos-containing waste material with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings, before depositing the material at a waste disposal site. Use the agent as recommended for the particular dust by the manufacturer of the agent.

(b) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(c) Wetting may be suspended when the ambient temperature at the waste disposal site is less than fifteen degrees Fahrenheit [-9.44 degrees Celsius] as determined by an appropriate measurement method with an accuracy of plus or minus two degrees Fahrenheit [1.11 degrees Celsius]. During periods when wetting operations are suspended, the temperature must be recorded at least at hourly intervals, and records must be retained for at least two years in a form suitable for inspection.

(2) Use an alternative emission control and treatment method that has received prior written approval by the department

and administrator. To obtain approval for an alternative method, a written application must be submitted to the department and the administrator of the United States environmental protection agency demonstrating that the following criteria are met:

(a) The alternative method will control asbestos emissions equivalent to currently required methods.

(b) That the alternative method is suitable for the intended application.

(c) The alternative method will not violate other regulations.

(d) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

(3) When waste is transported by vehicle to a disposal site, all of the requirements of subdivision d of subsection 11 must be complied with.

11. **Standard for waste disposal for manufacturing, demolition, renovation, spraying, and fabricating operations**. Each owner or operator of any source covered under any of the provisions of subsection 5, 6, 7, or 8 shall comply with all the provisions of this subsection. Each owner or operator of any source covered by subsection 10 shall comply with subdivision d of this subsection.

a. Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods as follows:

(1) Adequately wet asbestos-containing waste material as follows:

(a) Mix asbestos waste from control devices with water to form a slurry; adequately wet other asbestos-containing waste material;

(b) Discharge no visible emissions to the outside air from collection, mixing, and wetting operations, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air;

(c) After wetting, seal all asbestos-containing waste material in leaktight containers while wet. For materials

that will not fit into containers without additional breaking, put materials into leaktight wrapping;

(d) Label the containers or wrapped materials specified above as follows:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

Alternatively, use warning labels currently specified by occupational safety and health standards of the department of labor, occupational safety and health administration (OSHA) under title 29, Code of Federal Regulations, 1910.1001 or title 29, Code of Federal Regulations, ~~1926.58~~ 1926.1101(k)(8); and

(e) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(a) Form all asbestos-containing waste material into nonfriable pellets or other shapes.

(b) Discharge no visible emissions to the outside air from the collection and processing operations, including incineration, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the regulated asbestos-containing material is not removed prior to demolition according to paragraph 4 of subdivision a and subparagraphs a, b, c, and d of paragraph 1 of subdivision c of subsection 6 adequately wet asbestos-containing waste material at all times during and after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leaktight containers or wrapping but may be transported by covered hauling and disposed of in bulk.

(4) Use an alternative disposal method that has received prior approval by the department and administrator of the United States environmental protection agency.

(5) As applied to demolition and renovation, the requirements of subdivision a of this subsection do not apply to category I or category II nonfriable asbestos-containing material waste that is not or will not become crumbled, pulverized, or reduced to powder.

b. Deposit all asbestos-containing waste material as soon as practical at:

(1) Department-approved waste disposal sites operated in accordance with the provisions of subsection 15.

(2) A United States environmental protection agency-approved site that converts regulated asbestos-containing material and asbestos-containing waste material into nonasbestos (asbestos free) material according to the provisions of subsection 17.

(3) The requirements of this subdivision do not apply to category I nonfriable asbestos-containing material that is not or will not become regulated asbestos-containing material.

c. All facilities used for the temporary storage of asbestos-containing waste material must be controlled and the material must be stored in leaktight containers.

(1) Post a warning sign at the entrances to the temporary storage facility with a label as follows:

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

Alternatively, use warning labels currently specified by occupational safety and health standards of the department of labor, occupational safety and health administration (OSHA) under title 29, Code of Federal Regulations, 1910.1001 or title 29, Code of Federal Regulations, 1926.58.

(2) Take necessary precautions to prevent or restrict access to the temporary storage facility.

(3) The temporary storage facility must be inspected at least once per week to ensure that good structural integrity of the

storage facility is maintained and that the facility remains secure.

(4) The maximum length of time allowed for temporary storage of an asbestos-containing waste material may not exceed one hundred eighty days.

d. Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must:

(1) Be displayed in such a manner and location that a person can easily read the legend.

(2) Conform to the requirements for twenty-inch by fourteen-inch [50.8-centimeter by 35.56-centimeter] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this paragraph; and

(3) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.
Authorized Personnel Only	14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

e. Prior to transportation of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing waste material off the facility site:

(1) The owner or operator and the transporter shall ensure that a waste shipment record has been appropriately completed and signed by the generator, and accompanies the waste to the disposal site. The waste shipment record must include the following information:

(a) Name, address, and telephone number of the facility owner or operator where the asbestos-containing waste materials were generated.

(b) Location of the facility where asbestos-containing waste material was generated.

(c) The name and address of this department as being the responsible agency for administering the asbestos NESHAP program.

(d) Estimated quantity of asbestos-containing waste material in cubic yards.

(e) Name and physical site location of the waste disposal site where the asbestos-containing waste will be deposited.

(f) The name and telephone number of the disposal site operator.

(g) The date transported.

(h) The name, address, and telephone number of the transporters.

(i) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record signed by the owner or operator of the designated disposal site is not received by the waste generator within thirty-five days of the date the waste was accepted by the initial transporter, contact the transporter or the owner or operator, or both, of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to this department if a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site is not received by the waste

generator within forty-five days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(a) A copy of the waste shipment record for which a confirmation of delivery was not received; and

(b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the result of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site for at least two years.

(6) A copy of the completed waste shipment record must be submitted to the department by the owner or operator of the facility no later than ten days after the owner or operator of the facility receives the completed waste shipment record from the landfill operator.

f. Furnish upon request, and make available for inspection by the department, all records required under this section.

g. If an acceptable disposal site, as determined by subsection 15, is located on the same property as the facility where asbestos-containing waste materials were generated, then the recordkeeping requirements of subdivision e of this subsection do not apply. The owner shall maintain records which include information on the quantity, location, and date of asbestos-containing waste disposal activities.

12. **Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.** Each owner or operator of any inactive waste disposal site that received deposits of asbestos-containing waste material generated by sources covered under subsection 3, 5, 8, or 10, shall:

a. Comply with one of the following:

(1) Discharge no visible emissions to the outside air from an inactive waste disposal site subject to this subsection;

(2) Cover the asbestos-containing waste material with at least fifteen centimeters [6 inches] of compacted non-asbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material;

(3) In areas where vegetation would be difficult to maintain, cover the asbestos-containing waste material with at least sixty centimeters [2 feet] of compacted non-asbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste or cover with at least six inches [15.24 centimeters] of compacted non-asbestos-containing material and at least an additional three inches [7.62 centimeters] of a nonasbestos crushed rock cover in place of the vegetation; or

(4) For inactive waste disposal sites for asbestos tailings, apply a resinous-based or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent. Obtain prior approval of the department to use other equally effective dust suppression agents. For purposes of this paragraph, used, spent, or other wasteoil is not considered a dust suppression agent.

b. Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph 2 or 3 of subdivision a of this subsection.

(1) Display warning signs at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

(a) Be posted in such a manner and location that a person can easily read the legend.

(b) Conform to the requirements for fifty-one-centimeter by thirty-six-centimeter [20-inch by 14-inch] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this subdivision.

(c) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.

CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.
Authorized Personnel Only	14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper two lines.

(2) Fence the perimeter of the site in a manner adequate to deter access by the general public.

(3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.

c. The owner or operator may use an alternative control method that has received prior approval of the department and administrator of the United States environmental protection agency rather than comply with the requirements of subdivision a or b of this subsection.

d. Notify the department, in writing, at least forty-five days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of a new start date must be provided to the department at least ten days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the department may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

e. Within sixty days of a site becoming inactive, record in accordance with state law a notation on the deed to the facility property and on any instrument that would normally be examined during a title search. This notation will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used for the disposal of asbestos-containing waste material;

(2) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in subdivision f of subsection 15 have been filed with the department; and

(3) The site is subject to this section.

13. **Air-cleaning**.

a. The owner or operator who elects to use air-cleaning, as permitted in subsections 3, 5, 6, 7, 8, 10, and 11 shall:

(1) Use fabric filter collection devices except as noted in subdivision b of this subsection, doing all of the following:

(a) Ensuring that the airflow permeability, as determined by A.S.T.M. method D737-75, does not exceed nine $m^3/min/m^2$ [30 $ft^3/min/ft^2$] for woven fabrics or eleven $m^3/min/m^2$ [35 $ft^3/min/ft^2$] for felted fabrics, except that twelve $m^3/min/m^2$ [40 $ft^3/min/ft^2$] for woven and fourteen $m^3/min/m^2$[45 $ft^3/min/ft^2$] for felted fabrics is allowed for filtering air from asbestos ore dryers.

(b) Ensuring that felted fabric weighs at least four hundred seventy-five grams per square meter [14 ounces per square yard] and is at least one and six-tenths millimeters [1/16 inch] thick throughout.

(c) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this subsection. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the asbestos material.

(3) For fabric filters installed after January 10, 1989, provide for easy inspection for faulty bags.

b. There are the following exceptions to paragraph 1 of subdivision a:

(1) If the use of fabric creates a fire or explosion hazard or the department determines that a fabric filter is not feasible, the department may authorize as a substitute the use of wet

collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals [40 inches water gauge pressure].

(2) Use a high-efficiency particulate air filter that is certified to be at least ninety-nine and ninety-seven hundredths percent efficient for particles with a diameter size of three-tenths microns and greater.

(3) The department and administrator of the United States environmental protection agency may authorize the use of filtering equipment other than that described in subdivisions a and b of this subsection if the owner or operator demonstrates to the administrator and the department's satisfaction that it is equivalent to the described equipment in filtering asbestos material.

14. **Reporting**.

a. Any existing source to which this section applies (with the exception of sources subject to subsections 4, 6, 7, and 9) which has not previously supplied a notice to this department or the administrator, shall provide such notice within ninety days of the effective date of this regulation. Any new source to which this section applies shall provide notice to this department within ninety days of the effective startup date of the source. Changes to the information provided in a notice must be submitted to this department within thirty days of the change taking place. The notice shall provide the following information to the department:

(1) A description of the emission control equipment used for each process; and

(2) If a fabric filter device is used to control emissions;

(a) The airflow permeability in $m^3/min/m^2$ if the fabric filter device uses a woven fabric and; if the fabric is synthetic, whether the fill yarn is spun or not spun.

(b) If the fabric filter device uses a felted fabric, the density in g/m^2, the minimum thickness in millimeters, and the airflow permeability in $m^3/min/m^2$.

(3) If a high-efficiency particulate air filter is used to control emissions, the certified efficiency.

(4) For sources subject to subsections 10 and 11:

(a) A brief description of each process that generates asbestos-containing waste material;

(b) The average volume of asbestos-containing waste material disposed of in cubic yards per day;

(c) The emission control methods used in all stages of waste disposal; and

(d) The type of disposal site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(5) For sources subject to subsections 12 and 15:

(a) A brief description of the site; and

(b) The method or methods used to comply with the standard, or alternative procedures to be used.

b. The information required by subdivision a of this subsection must accompany the information required by ~~subsection 8 of section 33-15-13-01~~ 40 Code of Federal Regulations 61.10. Active waste disposal sites subject to subsection 15 shall also comply with this provision. Roadways, demolition and renovations, spraying, and insulating materials are exempted from the requirements of ~~section 33-15-13-01.1~~ 40 Code of Federal Regulations 61.10(a).

15. **Standard for active waste disposal sites.** To be an acceptable site for disposal of asbestos-containing waste material under subsections 10, 11, and 17, an active waste disposal site must meet the requirements of this subsection.

a. Either there shall be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of subdivisions c and d of this subsection must be met.

b. Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph 1 of subdivision c of this subsection must be met.

(1) Warning signs must be displayed at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(a) Be posted in such a manner and location that a person may easily read the legend.

(b) Conform to the requirements of fifty-one centimeters by thirty-six centimeters [20 inches by 14 inches] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4), and this subsection.

(c) Display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm [1 in.] Sans Serif, Gothic, or Block
Avoid Creating Dust	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block
Breathing Asbestos Dust May Cause Lung Disease and Cancer	14 Point Gothic

Spacing between lines must be at least equal to the height of the upper two lines.

(2) The perimeter of the disposal site must be fenced in order to adequately deter access by the general public.

(3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.

c. Rather than meet the no visible emission requirements of subdivision a of this subsection, an active waste disposal site would be an acceptable site if at the end of each operating day, or at least once every twenty-four-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous twenty-four-hour period is covered with either:

(1) At least fifteen centimeters [6 inches] of compacted non-asbestos-containing material; or

(2) A resinous-based or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. This agent must be used in the manner and frequency recommended for the particular dust by the manufacturer of the dust suppression agent. Other equally effective dust suppression agents may be used upon prior approval by the department. For purposes of this paragraph, used, spent, or other waste oil is not considered a dust suppression agent.

d. Rather than meet the no visible emission requirements of subdivision a of this subsection, use an alternative emission control method that has received prior approval by the department and administrator of the United States environmental protection agency.

e. For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(1) Maintain waste shipment records which include the following information:

(a) The name, address, and telephone number of the waste generator.

(b) The name, address, and telephone number of the transporters.

(c) The quantity of the asbestos-containing material in cubic yards.

(d) The presence of improperly enclosed or uncovered wastes or any asbestos-containing waste material not sealed in leaktight containers. Report in writing to this department by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

(e) The date of the receipt.

(2) As soon as possible and no longer than thirty days after receipt of the waste send a copy of the signed waste shipment record to the waste generator.

(3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within fifteen days after receiving the waste, immediately report in writing to this department. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(4) Retain a copy of all records and reports required by this subdivision for at least two years.

f. Maintain until closure, records of the location, depth and area and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

g. Upon closure, comply with all the provisions of subsection 12.

h. Submit to this department, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

i. Furnish upon request and make available during normal business for inspection by this department, all records required under this section.

j. Comply with subdivision d of subsection 12 if it becomes necessary to excavate or otherwise disturb asbestos-containing waste material that has been previously covered.

16. **Asbestos abatement licensing and certification.** No public employees or employees of asbestos contractors shall engage in any asbestos abatement activity or provide asbestos abatement project monitoring unless they are certified with the department as provided in this subsection. No person shall engage in any asbestos abatement activity in a public or commercial building unless the person is certified with the department as provided in this subsection. Certification will be for a period of one year from the completion date of the initial training course or the last refresher course in the appropriate discipline. All asbestos contractors and firms who provide asbestos abatement or asbestos abatement project monitoring services, must be licensed with this department, as provided in this subsection, prior to beginning asbestos abatement or asbestos abatement project monitoring activities. At least one person having completed the requirements for supervisor certification of subdivision b of this subsection is required to be at the worksite at all times while work is in progress, if the work involves repair, removal, encapsulation, enclosure, or handling of regulated asbestos-containing material if the work is being conducted by an asbestos contractor or public employees. At least one onsite individual having completed the supervisor training requirement of subdivision b of this subsection is required to be present if the activity is regulated by subsection 6 and the work is being conducted by employees of the owner.

a. Asbestos workers. All asbestos workers employed by asbestos abatement contractors and all public employees and all other asbestos workers in public and commercial buildings engaged in the repair, removal, enclosure, encapsulation, or handling of regulated asbestos-containing material, must obtain certification as outlined in all paragraphs of this subdivision except as provided in subdivision h.

(1) Application. Any applicant desiring certification as an asbestos worker shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of fifty dollars except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.

(2) Initial training. Any applicant desiring certification as an asbestos worker shall complete the initial training requirements for asbestos worker accreditation under title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course designed for asbestos workers. The training course must have received approval from the environmental protection agency or the department.

(3) Examination. Any applicant for certification shall pass a written examination administered by the department. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations may be given before requiring attendance of another initial training course. Information concerning the testing arrangements can be obtained from the department.

(4) Refresher training. Any asbestos worker who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The course content must include a review of the changes in federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, the asbestos worker shall complete a refresher course within one year of the last refresher course.

(5) Certification renewal. Any asbestos worker who desires to renew their certification must have attended a refresher training course within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such course and a recertification fee of fifty dollars. Certification is current for a period of twelve months from the date of the training course. If an asbestos worker does not satisfy the refresher training requirements of this subdivision within two years of the date of the initial training course or of the last refresher training course, then the individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification.

(6) The certification card issued by the department must be available at the worksite for each asbestos worker.

b. Other asbestos disciplines. Any individual, except asbestos workers, acting as or acting on behalf of an asbestos contractor or as a public employee who performs an asbestos abatement service or any individual who performs asbestos abatement project monitoring on behalf of a contracting firm or as a public employee or any other individual who performs asbestos abatement in a public or commercial building must obtain certification as outlined in all paragraphs of this subdivision. This certification requirement applies to asbestos abatement supervisors, asbestos inspectors, asbestos management planners, asbestos abatement project designers, and asbestos abatement project monitors except as provided in subdivision h.

(1) Application. Any person desiring certification in the disciplines of asbestos inspector, asbestos management planner, asbestos abatement project designer, asbestos abatement project monitor, and asbestos abatement supervisor shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of fifty dollars for each discipline within which the applicant is seeking certification except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.

(2) The initial training requirements are as follows:

(a) Any applicant desiring certification as an asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement supervisor or any individual required to meet the training requirements of paragraph 8 of subdivision c

of subsection 6 shall complete the initial training requirements set forth in title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course in the appropriate discipline. The training course must have received approval in the respective discipline from the environmental protection agency or the department.

(b) Asbestos abatement project monitors must have a valid state certification as asbestos abatement supervisor or asbestos abatement project designer and shall have completed a NIOSH 582 or equivalent air sampling course of not less than four days in length.

(3) Examination. Any applicant for certification in a specific discipline except asbestos abatement project monitor shall pass a written examination administered by the department for that discipline. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations shall be given before requiring attendance of another initial training course.

(4) Refresher training. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, or asbestos abatement project designer who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, or any individual who must meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The course content must include a review of the changes in the federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, these persons shall complete a refresher

course designed for the respective disciplines within one year of the last refresher course.

(5) Certification renewal. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement project monitor who desires to renew the person's certification must have attended a refresher training course in the appropriate discipline within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such a course and a recertification fee of fifty dollars per discipline. Certification is current for a period of twelve months from the date of the training course. If an individual does not satisfy the refresher training requirements of this subdivision in their respective discipline within two years of the date of the initial training or of the last refresher training, then that individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification. Refresher training of the air sampling course for project monitors is not required.

(6) The certification card issued by the department must be available at the worksite.

c. Asbestos contractor license. Each contractor who performs asbestos abatement services or performs asbestos abatement project monitoring services in the state shall obtain an asbestos contractor license except as provided in subdivision h.

(1) Submit an application to the department on forms supplied by the department. An application shall be accompanied by a nonrefundable fee of one hundred fifty dollars.

(2) The license fee will cover the period from January first through December thirty-first of each year unless the license is suspended, revoked, or denied as specified in subdivision f. The fee shall be one hundred fifty dollars regardless of the application date. Following the initial submittal, the renewal fee shall be due and payable by January thirtieth of the following year.

(3) A contractor seeking an asbestos contractor license must have completed the appropriate training and certification requirements in subdivision b of this subsection. The contractor may designate an employee who has completed this requirement to serve as the contractor's agent for the purposes of obtaining an asbestos contractor license.

(4) Asbestos contractors who provide multiple services are not required to pay additional license fees.

(5) All certifiable services offered by an asbestos contractor must be performed by persons certified in accordance with subdivisions a and b of this subsection.

(6) A copy of the asbestos contractor license shall be made available at the worksite.

(7) This license does not exempt, supersede, or replace any other state or local licensing or permitting requirements.

d. Approved initial and refresher training courses. The department will maintain and provide a listing of approved initial and refresher training courses. Applicants seeking approval of courses, other than those present on the department list, must submit information on the course content to the department. The course content must satisfy the minimum requirements of the model contractor accreditation plan as amended February 3, 1994. The department will advise the applicant whether the course is approved within thirty days of receipt of the necessary information. Training course providers will be required to meet all applicable requirements contained in title 40, Code of Federal Regulations, part 763, appendix C to subpart E as amended February 3, 1994.

e. Reciprocity. Each applicant for asbestos worker or asbestos contractor certification who is licensed or certified for asbestos abatement in another state may petition the department for certification without written examination. The department shall evaluate the requirements in such other states and shall issue the certification without examination if the department determines that the requirements in such other states are at least as stringent as the requirements for certification in North Dakota. Each application for certification pursuant to this subdivision shall submit an application accompanied by a nonrefundable fee of fifty dollars.

f. Suspension, revocation, or denial. An asbestos certification or license may be suspended, revoked, or denied if:

(1) Violations of the requirements of this section are noted;

(2) Another state has revoked, suspended, or denied a license or certification for violations of applicable standards;

(3) An incomplete application is filed; or

(4) The required fee is not submitted.

g. Public employees will not be required to pay the fifty dollar certification or recertification fees.

h. Any individual or asbestos contractor engaged in repair, removal, enclosure, or encapsulation activities involving less than or equal to three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing materials, are exempt from the certification and licensing requirements of this subsection.

i. Upon written request, the department, at its discretion, may review training course material and conduct an audit of a training course to determine if the course and examination meet the training requirements of title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994. Under the authority granted to this department by the environmental protection agency courses that this department determine to meet the model contractor accreditation plan shall be listed in the federal register list of approved courses.

(1) Training courses seeking department approval shall submit the material necessary for the department to conduct the review, including the submittal requirements listed in title 40, Code of Federal Regulations, part 763, appendix C, subpart E, model contractor accreditation plan as amended February 3, 1994.

(2) The department must be provided access, without cost, to any asbestos course conducted in this state to determine if the course meets the requirement of the environmental protection agency model contractor accreditation plan as amended February 3, 1994. Following such an audit, the department may rescind approval or refuse to accept as adequate any course determined not to meet the training requirements of the environmental protection agency model contractor accreditation plan.

(3) Any training provider requesting a review of the provider's course for approval by this department shall submit a filing fee of one hundred fifty dollars plus an application processing fee. The application processing fee will be based on the actual processing costs, including time spent by this department to conduct the course review and course audit, and any travel and lodging expenses the department incurs conducting these items. Following the course review and audit, and after making a determination on the accreditation status of the course, a statement will be sent to the applicant listing the remaining application processing costs. The

statement must be sent within fifteen months of the submittal of the initial filing fee.

17. **Standard for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.** Each owner or operator of an operation that converts regulated asbestos-containing material and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

a. Obtain the prior written approval of this department and the administrator of the United States environmental protection agency to construct the facility. To obtain approval, the owner or operator shall provide the department and the administrator of the United States environmental protection agency with the following information:

(1) Application to construct pursuant to chapter 33-15-14.

(2) In addition to the information requirements of chapter 33-15-14, provide a:

(a) Description of the waste feed handling and temporary storage.

(b) Description of process operating conditions.

(c) Description of the handling and temporary storage of the end products.

(d) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.

(3) Performance test protocol, including provisions for obtaining information required under subdivision b of this subsection.

(4) The department may require that a demonstration of the process be performed prior to approval of the application to construct.

b. Conduct a startup performance test. Test results must include:

(1) A detailed description of the types and quantities of nonasbestos material, regulated asbestos-containing material, and asbestos-containing waste material processed (e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc.). Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(3) Results of analyses using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as eight-hour composite samples (one 200-gram [seven-ounce] sample per hour), beginning with the initial introduction of regulated asbestos-containing material or asbestos-containing waste material and continuing until the end of the performance test.

(4) A description of operating parameters, such as temperature and residence times, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

c. During the initial ninety days of operation:

(1) Continuously monitor and log the operating parameters identified during startup performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Monitor input materials to ensure that they are consistent with the test feed materials described during startup performance tests in paragraph 1 of this subdivision.

(3) Collect and analyze samples taken as ten-day composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of all output materials for the presence of asbestos. Composite samples may be for fewer than ten days. Transmission electron microscopy must be used to analyze the output materials for the presence of asbestos. During the initial ninety-day period, all output materials must be stored onsite until analysis shows the material to be asbestos-free or be disposed of as asbestos-containing waste material according to subsection 11.

d. After the initial ninety days of operation:

(1) Continuously monitor and record the operating parameters identified during startup performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating

conditions established to ensure the production of nonasbestos (asbestos-free) output material shall be:

(a) Disposed of as asbestos-containing waste material according to subsection 11;

(b) Recycled as waste feed during process operations within the established range of operating conditions; or

(c) Stored temporarily onsite in a leaktight container until analyzed for asbestos content. Any product material that is not asbestos-free shall either be disposed of as asbestos-containing waste material or recycled as waste feed to the process.

(2) Collect and analyze monthly composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of the output material. Transmission electron microscopy must be used to analyze the output material for the presence of asbestos.

e. Discharge no visible emissions to the outside air from any part of the operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to or are vented to the outside air.

f. Maintain records onsite and include the following information:

(1) Results of startup performance testing and all subsequent performance testing, including operating parameters, feed characteristics, and analyses of output materials.

(2) Results of the composite analysis required during the initial ninety days of operation under subdivision c of this subsection.

(3) Results of the monthly composite analysis required under subdivision d of this subsection.

(4) Results of continuous monitoring and logs of process operating parameters required under subdivisions c and d of this subsection.

(5) Information on waste shipments received as required in subdivision e of subsection 15.

(6) For output materials when no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which output

materials were sold or deposited and the date of sale or disposal.

(7) Retain records required by this subdivision for at least two years.

g. Submit the following reports to the department:

(1) A report for each analysis of product composite samples performed during the initial ninety days of operation.

(2) A quarterly report, including the following information concerning activities during each consecutive three-month period:

(a) Results of analyses of monthly product composite samples.

(b) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.

(c) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily onsite until analyzed for asbestos content.

(d) The information on waste disposal activities as required in subdivision f of subsection 15.

h. Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this section. Output material in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the startup performance testing, unless shown by transmission electron microscopy analysis to be asbestos-free shall be considered to be asbestos-containing waste and must be handled and disposed of in accordance with subsections 11 and 15 or reprocessed while all of the established operating parameters are being met.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; January 1, 1996; September 1, 2002; February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-03.1
Law Implemented: NDCC 23-25-03, 23-25-03.1

33-15-14-02. Permit to construct.

1. **Permit to construct required.** No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter. This requirement shall also apply to any source for which a federal standard of performance has been promulgated prior to such filing of an application for a permit to construct. A list of sources for which a federal standard has been promulgated, and the standards which apply to such sources, must be available at the department's offices.

   The initiation of activities that are exempt from the definition of construction, installation, or establishment in section 33-15-14-01.1, prior to obtaining a permit to construct, are at the owner's or operator's own risk. These activities have no impact on the department's decision to issue a permit to construct. The initiation or completion of such activities conveys no rights to a permit to construct under this section.

2. **Application for permit to construct.**

   a. Application for a permit to construct a new installation or source must be made by the owner or operator thereof on forms furnished by the department.

   b. A separate application is required for each new installation or source subject to this chapter.

   c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance with this article and will notify the department, in writing, of the startup of operation of such source.

3. **Alterations to source.**

   a. The addition to or enlargement of or replacement of or alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.

   b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an

amount greater than that specified in subdivision a of subsection 5 of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted must be considered to be construction, installation, or establishment of a new source, except that:

(1) Routine maintenance, repair, and replacement may not be considered a physical change.

(2) The following may not be considered a change in the method of operation:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source and it is not limited by a permit condition.

(b) An increase in the hours of operation if it is not limited by a permit condition.

(c) Changes from one operating scenario to another provided the alternative operating scenarios are identified and approved in a permit to operate.

(d) Trading of emissions within a facility provided:

[1] These trades have been identified and approved in a permit to operate; and

[2] The total facility emissions do not exceed the facility emissions cap established in the permit to operate.

(e) Trading and utilizing acid rain allowances provided compliance is maintained with all other applicable requirements.

c. Any owner or operator of a source who requests an increase in the allowable sulfur dioxide emission rate for the source pursuant to section 33-15-02-07 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 6.

4. **Submission of plans - Deficiencies in application.** As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.

   a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of environmental engineering). These documents are incorporated by reference.

   b. When an air quality impact model specified in the documents incorporated by reference in subdivision a is inappropriate, the model may be modified or another model substituted provided:

      (1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.

      (2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711).

      (3) Written approval from the department must be obtained for any modification or substitution.

      (4) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.

5. **Review of application - Standard for granting permits to construct.** The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within ninety days of the receipt of the completed application, make the following preliminary determinations:

   a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will cause or contribute to a violation of any applicable ambient air quality standard. A new stationary source will be considered to cause or contribute to a violation of an ambient air quality standard when such source would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable ambient standard:

Contaminant	Averaging Time (hours)				
	Annual ($\mu g/m^3$)	24 ($\mu g/m^3$)	8 ($\mu g/m^3$)	3 ($\mu g/m^3$)	1 ($\mu g/m^3$)
SO_2	1.0	5		25	25
PM_{10}	1.0	5			
NO_2	1.0				25
CO			500		2000

   b. Whether the proposed project will provide all necessary and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.

6. **Public participation - Final action on application.**

   a. The following source categories are subject to the public participation procedures under this subsection:

      (1) Those affected facilities designated under chapter 33-15-13.

      (2) New sources that will be required to obtain a permit to operate under section 33-15-14-06.

      (3) Modifications to an existing facility which will increase the potential to emit from the facility by the following amounts:

         (a) One hundred tons [90.72 metric tons] per year or more of particulate matter, sulfur dioxide, nitrogen oxides, hydrogen sulfide, carbon monoxide, or volatile organic compounds;

(b) Ten tons [9.07 metric tons] per year or more of any contaminant listed under section 112(b) of the Federal Clean Air Act; or

(c) Twenty-five tons [22.68 metric tons] per year or more of any combination of contaminants listed under section 112(b) of the Federal Clean Air Act.

(4) Sources which the department has determined to have a major impact on air quality.

(5) Those for which a request for a public comment period has been received from the public.

(6) Sources for which a significant degree of public interest exists regarding air quality issues.

(7) Those sources which request a federally enforceable permit which limits their potential to emit.

b. With respect to the permit to construct application, the department shall:

(1) Within ninety days of receipt of a complete application, make a preliminary determination concerning issuance of a permit to construct.

(2) Within ninety days of the receipt of the complete application, make available in at least one location in the county or counties in which the proposed project is to be located, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.

(3) Publish notice to the public by prominent advertisement, within ninety days of the receipt of the complete application, in the region affected, of the opportunity for written comment on the preliminary determinations. The public notice must include the proposed location of the source.

(4) Within ninety days of the receipt of the complete application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

(5) Within ninety days of receipt of a complete application, provide a copy of the proposed permit and all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.

(6) Allow thirty days for public comment.

(7) Consider all public comments properly received, in making the final decision on the application.

(8) Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.

(9) Take final action on the application within thirty days of the applicant's response to the public comments.

(10) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.

c. For those sources subject to the requirements of chapter 33-15-15, the public participation procedures under subsection 5 of section 33-15-15-01 shall be followed.

7. **Denial of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of any one of subdivision a or b of subsection 5 in the negative, it shall deny the permit and notify the applicant, in writing, of the denial to issue a permit to construct.

   If a permit to construct is denied, the construction, installation, or establishment of the new stationary source shall be unlawful. No permit to construct or modify may be granted if such construction, or modification, or installation, will result in a violation of this article.

8. **Issuance of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of subdivision a or b of subsection 5 in the affirmative, the department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.

9. **Permit to construct - Conditions.** The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:

a. Sampling, testing, and monitoring of the facilities or the ambient air or both.

b. Trial operation and performance testing.

c. Prevention and abatement of nuisance conditions caused by operation of the facility.

d. Recordkeeping and reporting.

e. Compliance with applicable rules and regulations in accordance with a compliance schedule.

f. Limitation on hours of operation, production rate, processing rate, or fuel usage when necessary to assure compliance with this article.

The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. **Scope.**

a. The issuance of a permit to construct for any source does not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting the source.

b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

11. **Transfer of permit to construct.** To ensure the responsible owners or operators, or both, are identified, the holder of a permit to construct may not transfer such permit without prior approval of the department.

12. **[Reserved]**

13. **Exemptions.** A permit to construct is not required for the following stationary sources provided there is no federal requirement for a permit or approval for construction or operation and there is no applicable new source performance standard, or national emission standard for hazardous air pollutants.

a. Maintenance, structural changes, or minor repair of process equipment, fuel burning equipment, control equipment, or incinerators which do not change capacity of such process equipment, fuel burning equipment, control equipment, or incinerators and which do not involve any change in the quality, nature, or quantity of emissions therefrom.

b. Fossil fuel burning equipment, other than smokehouse generators, which meet all of the following criteria:

(1) The heat input per unit does not exceed ten million British thermal units per hour.

(2) The total aggregate heat input from all equipment does not exceed ten million British thermal units per hour.

(3) The actual emissions, as defined in chapter 33-15-15, from all equipment do not exceed twenty-five tons [22.67 metric tons] per year of any air contaminant and the potential to emit any air contaminant for which an ambient air quality standard has been promulgated in chapter 33-15-02 is less than one hundred tons [90.68 metric tons] per year.

c. (1) Any single internal combustion engine with less than five hundred brake horsepower, or multiple engines with a combined brake horsepower rating less than five hundred brake horsepower.

(2) Any single internal combustion engine with a maximum rating of less than one thousand brake horsepower, or multiple engines with a combined brake horsepower rating of less than one thousand brake horsepower, and which operates a total of five hundred hours or less in a rolling twelve-month period.

(3) The exemptions listed in paragraphs 1 and 2 do not apply to engines that are a utility unit as defined in section 33-15-21-08.1.

d. Bench scale laboratory equipment used exclusively for chemical or physical analysis or experimentation.

e. Portable brazing, soldering, or welding equipment.

f. The following equipment:

(1) Comfort air-conditioners or comfort ventilating systems which are not designed and not intended to be used to remove emissions generated by or released from specific units or equipment.

(2) Water cooling towers and water cooling ponds unless used for evaporative cooling of process water, or for evaporative cooling of water from barometric jets or barometric condensers or used in conjunction with an installation requiring a permit.

(3) Equipment used exclusively for steam cleaning.

(4) Porcelain enameling furnaces or porcelain enameling drying ovens.

(5) Unheated solvent dispensing containers or unheated solvent rinsing containers of sixty gallons [227.12 liters] capacity or less.

(6) Equipment used for hydraulic or hydrostatic testing.

g. The following equipment or any exhaust system or collector serving exclusively such equipment:

(1) Blast cleaning equipment using a suspension of abrasive in water.

(2) Bakery ovens if the products are edible and intended for human consumption.

(3) Kilns for firing ceramic ware, heated exclusively by gaseous fuels, singly or in combinations, and electricity.

(4) Confection cookers if the products are edible and intended for human consumption.

(5) Drop hammers or hydraulic presses for forging or metalworking.

(6) Diecasting machines.

(7) Photographic process equipment through which an image is reproduced upon material through the use of sensitized radiant energy.

(8) Equipment for drilling, carving, cutting, routing, turning, sawing, planing, spindle sanding, or disc sanding of wood or wood products, which is located within a facility that does not vent to the outside air.

(9) Equipment for surface preparation of metals by use of aqueous solutions, except for acid solutions.

(10) Equipment for washing or drying products fabricated from metal or glass; provided, that no volatile organic materials are used in the process and that no oil or solid fuel is burned.

(11) Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents.

h. Natural draft hoods or natural draft ventilators.

i. Containers, reservoirs, or tanks used exclusively for:

(1) Dipping operations for coating objects with oils, waxes, or greases, if no organic solvents are used.

(2) Dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents.

(3) Storage of butane, propane, or liquefied petroleum or natural gas.

(4) Storage of lubricating oils.

(5) Storage of petroleum liquids except those containers, reservoirs, or tanks subject to the ~~air pollution control~~ requirements of chapter 33-15-12. ~~The owner or operator must still provide notification as required in section 33-15-12-02, subpart A.~~

j. Gaseous fuel-fired or electrically heated furnaces for heat treating glass or metals, the use of which does not involve molten materials.

k. Crucible furnaces, pot furnaces, or induction furnaces, with a capacity of one thousand pounds [453.59 kilograms] or less each, unless otherwise noted, in which no sweating or distilling is conducted, nor any fluxing conducted utilizing chloride, fluoride, or ammonium compounds, and from which only the following metals are poured or in which only the following metals are held in a molten state:

(1) Aluminum or any alloy containing over fifty percent aluminum; provided, that no gaseous chlorine compounds, chlorine, aluminum chloride, or aluminum fluoride are used.

(2) Magnesium or any alloy containing over fifty percent magnesium.

(3) Lead or any alloy containing over fifty percent lead, in a furnace with a capacity of five hundred fifty pounds [249.48 kilograms] or less.

(4) Tin or any alloy containing over fifty percent tin.

(5) Zinc or any alloy containing over fifty percent zinc.

(6) Copper.

(7) Precious metals.

l. Open burning activities within the scope of section 33-15-04-02.

m. Flares used to indicate some danger to the public.

n. Sources or alterations to a source which are of minor significance as determined by the department.

o. Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as defined in subdivision n of subsection 1 of section 33-15-14-06.

14. **Performance and emission testing.**

a. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Such tests must be conducted under the owner's or operator's permit to construct, and such permit is subject to the faithful completion of the test in accordance with this article.

b. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to construct must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.

c. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.

d. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative, or from requiring the owner or operator to conduct any test at such time as the department may determine.

15. **Responsibility to comply.**

a. Possession of a permit to construct does not relieve any person of the responsibility to comply with this article.

b. The exemption of any stationary source from the requirements of a permit to construct by reason of inclusion in subsection 13 does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

16. **Portable sources.** Sources which are designated to be portable and which are not subject to the requirements of chapter 33-15-15 are exempt from requirements to obtain a permit to construct. The owner or operator shall submit an application for a permit to operate prior to initiating operations.

17. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted under subsection 13 shall register the source with the department within such time limits and on such forms as the department may prescribe.

18. **Extensions of time.** The department may extend any of the time periods specified in subsections 4, 5, and 6 upon notification of the applicant by the department.

19. **Amendment of permits.** The department may, when the public interest requires or when necessary to ensure the accuracy of the permit, modify any condition or information contained in the permit to construct. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, the department will provide:

a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification, and the opportunity for a public hearing, upon request, as well as written public comment.

b. A minimum of a thirty-day period for written public comment, with the opportunity for a public hearing during that thirty-day period, upon request.

c. Consideration by the department of all comments received in its order for modification.

The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective March 1, 1980; February 1, 1982; October 1, 1987; June 1, 1990; March 1, 1994; August 1, 1995; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

33-15-14-06. Title V permit to operate.

1. **Definitions.** For purposes of this section:

a. "Affected source" means any source that includes one or more affected units.

b. "Affected state" means any state that is contiguous to North Dakota whose air quality may be affected by a source subject to a proposed title V permit, permit modification, or permit renewal or which is within fifty miles [80.47 kilometers] of the permitted source.

c. "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under title VI of the Federal Clean Air Act.

d. "Applicable requirement" means all of the following as they apply to emissions units at a source that is subject to requirements of this section (including requirements that have been promulgated or approved by the United States environmental protection agency through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the North Dakota state implementation plan approved or promulgated by the United States environmental protection agency through rulemaking under title I of the Federal Clean Air Act

that implements the relevant requirements of the Federal Clean Air Act, including any revisions to that plan.

(2) Any term or condition of any permit to construct issued pursuant to this chapter.

(3) Any standard or other requirement under section 111 including section 111(d) of the Federal Clean Air Act.

(4) Any standard or other requirement under section 112 of the Federal Clean Air Act including any requirement concerning accident prevention under section 112(r)(7) of the Federal Clean Air Act.

(5) Any standard or other requirement of the acid rain program under title IV of the Federal Clean Air Act.

(6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Federal Clean Air Act.

(7) Any standard or other requirement governing solid waste incineration, under section 129 of the Federal Clean Air Act.

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Federal Clean Air Act.

(9) Any standard or other requirement for tank vessels under section 183(f) of the Federal Clean Air Act.

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Federal Clean Air Act.

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Clean Air Act, unless the administrator of the United States environmental protection agency has determined that such requirements need not be contained in a title V permit.

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Federal Clean Air Act.

e. "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and

of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this section, or in any other regulations implementing title V of the Federal Clean Air Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

f. "Draft permit" means the version of a permit for which the department offers public participation or affected state review.

g. "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

h. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

i. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act. This term does not alter or affect the definition of unit for purposes of title IV of the Federal Clean Air Act.

j. "Environmental protection agency" or the "administrator" means the administrator of the United States environmental protection agency or the administrator's designee.

k. "Federal Clean Air Act" means the Federal Clean Air Act, as amended [42 U.S.C. 7401 et seq.].

l. "Final permit" means the version of a title V permit issued by the department that has completed all review procedures required in this section.

m. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

n. "General permit" means a title V permit to operate that meets the requirements of subdivision d of subsection 5.

o. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph 1 or 2. For the purposes of defining "major source", a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the contaminant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the standard industrial classification manual, 1987.

(1) A major source under section 112 of the Federal Clean Air Act, which is defined as:

(a) For contaminants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons [9.07 metric tons] per year (tpy) or more of any hazardous air contaminant which has been listed pursuant to section 112(b) of the Federal Clean Air Act, twenty-five tons [22.67 metric tons] per year or more of any combination of such hazardous air contaminants, or such lesser quantity as the administrator of the United States environmental protection agency may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the administrator of the United States environmental protection agency by rule.

(2) A major stationary source of air contaminants, that directly emits or has the potential to emit, one hundred tons [90.68

metric tons] per year or more of any air contaminant (including any major source of fugitive emissions of any such contaminant, as determined by rule by the administrator of the United States environmental protection agency). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

(a) Coal cleaning plants (with thermal dryers).

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

(h) Municipal incinerators capable of charging more than two hundred fifty tons [226.80 metric tons] of refuse per day.

(i) Hydrofluoric, sulfuric, or nitric acid plants.

(j) Petroleum refineries.

(k) Lime plants.

(l) Phosphate rock processing plants.

(m) Coke oven batteries.

(n) Sulfur recovery plants.

(o) Carbon black plants (furnace process).

(p) Primary lead smelters.

(q) Fuel conversion plants.

(r) Sintering plants.

(s) Secondary metal production plants.

(t) Chemical process plants.

(u) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input.

(v) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels.

(w) Taconite ore processing plants.

(x) Glass fiber processing plants.

(y) Charcoal production plants.

(z) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input.

(aa) Any other stationary source category which as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

p. "Permit modification" means a revision to a title V permit that meets the requirements of subdivision e of subsection 6.

q. "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, under this section (whether such costs are incurred by the department or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

r. "Permit revision" means any permit modification or administrative permit amendment.

s. "Potential to emit" means the maximum capacity of a stationary source to emit any air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator of the United States environmental protection agency and the department.

t. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator of the United States environmental protection agency for review.

u. "Regulated air contaminant" means the following:

(1) Nitrogen oxides or any volatile organic compounds.

(2) Any contaminant for which a national ambient air quality standard has been promulgated.

(3) Any contaminant that is subject to any standard promulgated under section 111 of the Federal Clean Air Act.

(4) Any class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

(5) Any contaminant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Federal Clean Air Act, including sections 112(g), (j), and (r) of the Federal Clean Air Act, including the following:

(a) Any contaminant subject to requirements under section 112(j) of the Federal Clean Air Act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Federal Clean Air Act, any contaminant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the Federal Clean Air Act; and

(b) Any contaminant for which the requirements of section 112(g)(2) of the Federal Clean Air Act have been met, but only with respect to the individual source subject to section 112(g)(2) of the Federal Clean Air Act requirement.

v. "Regulated contaminant" for fee calculation, which is used only for chapter 33-15-23, means any "regulated air contaminant" except the following:

(1) Carbon monoxide.

(2) Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

(3) Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

w. "Renewal" means the process by which a permit is reissued at the end of its term.

x. "Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(a) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars).

(b) The delegation of authority to such representatives is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the United States environmental protection agency).

(4) For affected sources:

(a) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Federal Clean Air Act or the regulations promulgated thereunder are concerned.

(b) The designated representative for any other purposes under this section.

y. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

z. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act.

aa. "Title V permit to operate or permit" (unless the context suggests otherwise) means any permit or group of permits covering a source that is subject to this section that is issued, renewed, amended, or revised pursuant to this section.

bb. "Title V source" means any source subject to the permitting requirements of this section, as provided in subsection 2.

2. **Applicability.**

a. This section is applicable to the following sources:

(1) Any major source.

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Federal Clean Air Act.

(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Clean Air Act.

(4) Any affected source.

(5) Any source in a source category designated by the administrator of the United States environmental protection agency.

b. The following source categories are exempt from the requirements of this section:

(1) All sources listed in subdivision a that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Federal Clean Air Act, are exempt from the obligation to obtain a title V permit until such time as the administrator of the United States environmental protection agency completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Federal Clean Air Act after July 21, 1992, those the administrator of the United States environmental protection agency determines to be exempt from the requirement to obtain a title V source permit at the time that the new standard is promulgated.

(3) Any source listed as exempt from the requirement to obtain a permit under this section may opt to apply for a title V permit. Sources that are exempted by paragraphs 1 and 2 and which do not opt to apply for a title V permit to operate are subject to the requirements of section 33-15-14-03.

(4) The following source categories are exempted from the obligation to obtain a permit under this section.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 60, subpart AAA - standards of performance for new residential wood heaters.

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61, subpart M - national emission standard for hazardous air pollutants for asbestos, section 61.145, standard for demolition and renovation.

c. For major sources, the department will include in the permit all applicable requirements for all relevant emissions units in the major source.

For any nonmajor source subject to the requirements of this section, the department will include in the permit all applicable requirements applicable to the emissions units that cause the source to be subject to this section.

d. Fugitive emissions from a source subject to the requirements of this section shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

3. **Scope.** Nothing within this section shall relieve the owner or operator of a source of the requirement to obtain a permit to construct under section 33-15-14-02 or to comply with any other applicable standard or requirement of this article.

4. **Permit applications.**

a. Duty to apply. For each title V source, the owner or operator shall submit a timely and complete permit application in accordance with this subdivision.

(1) Timely application.

(a) A timely application for a source applying for a title V permit for the first time is one that is submitted within one year of the source becoming subject to this section.

(b) Title V sources required to meet the requirements under section 112(g) of the Federal Clean Air Act, or to have a permit to construct under section 33-15-14-02, shall file a complete application to obtain the title V permit or permit revision within twelve months after commencing operation. Where an existing title V permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than eighteen months, prior to the date of permit expiration.

(2) Complete application. To be deemed complete, an application must provide all information required pursuant to subdivision c, except that applications for a permit revision need supply such information only if it is related to the proposed change. Information required under subdivision c must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with subdivision d. Unless the department determines that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in paragraph 3 of subdivision a of subsection 6. If, while processing an application that has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subdivision b of subsection 6, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

(3) Confidential information. If a source has submitted information to the department under a claim of confidentiality, the source must also submit a copy of such information directly to the administrator of the United States environmental protection agency when directed to do so by the department.

b. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

c. Standard application form and required information. All applications for a title V permit to operate shall be made on forms supplied by the department. Information as described below for each emissions unit at a title V source shall be included in the application. Detailed information for emissions units or activities that have the potential to emit less than the following quantities of air contaminants (insignificant units or activities) need not be included in permit applications:

Particulate: 2 tons [1.81 metric tons] per year

Inhalable particulate: 2 tons [1.81 metric tons] per year

Sulfur dioxide: 2 tons [1.81 metric tons] per year

Hydrogen sulfide: 2 tons [1.81 metric tons] per year

Carbon monoxide: 2 tons [1.81 metric tons] per year

Nitrogen oxides: 2 tons [1.81 metric tons] per year

Ozone: 2 tons [1.81 metric tons] per year

Reduced sulfur compounds: 2 tons [1.81 metric tons] per year

Volatile organic compounds: 2 tons [1.81 metric tons]

All other regulated contaminants including those in section 112(b) of the Federal Clean Air Act: 0.5 tons [0.45 metric tons] per year.

Where a contaminant could be placed in more than one category, the smallest emission level applies.

However, for insignificant activities or emissions units, a list of such activities or units must be included in the application. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under section 33-15-23-04. The application, shall, as a minimum, include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) All emissions of contaminants for which the source is major, and all emissions of regulated air contaminants. A permit application shall describe all emissions of regulated air contaminants emitted from any emissions unit, except when such units are exempted under this subdivision.

(b) Identification and description of all points of emissions described in subparagraph a in sufficient detail to establish the basis for fees and applicability of requirements of the Federal Clean Air Act and this article.

(c) Emissions rates in tons per year, in terms of the applicable standard, and terms that are necessary to establish compliance with the applicable compliance method.

(d) Fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, when applicable, for all regulated contaminants.

(g) Other information required by any applicable requirement including information related to stack height limitations developed pursuant to chapter 33-15-18.

(h) Calculations on which the information in subparagraphs a through g is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements; and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Federal Clean Air Act or of this article or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Information that the department determines to be necessary to define alternative operating scenarios identified by the source or to define permit terms and conditions.

(8) A compliance plan for all title V sources that contains all the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

[1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

[2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

[3] For requirements for which the source is not in compliance at the time of permit issuance,

a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

[1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

[2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

[3] A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Federal Clean Air Act with regard to the schedule and method

or methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with subdivision d and section 114(a)(3) of the Federal Clean Air Act;

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Federal Clean Air Act.

(10) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Federal Clean Air Act.

d. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

5. **Permit content.**

a. Standard permit requirements. Each permit issued under this section shall include, as a minimum, the following elements:

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit must state that, if an applicable requirement of the Federal Clean Air Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Federal Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator of the United States environmental protection agency and the department.

(c) If the state implementation plan allows a determination of an alternative emissions limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the department elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Each title V permit to operate shall expire upon the fifth anniversary of its issuance.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

[1] All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including subsection 10 and any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Federal Clean Air Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

[2] If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subparagraph c. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this item; and

[3] As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, if applicable, the following:

[1] Records of required monitoring information that include the following:

[a] The date, place as defined in the permit, and time of sampling or measurements;

[b] The dates analyses were performed;

[c] The company or entity that performed the analyses;

[d] The analytical techniques or methods used;

[e] The results of such analyses; and

[f] The operating conditions as existing at the time of sampling or measurement;

[2] Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring

instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

[1] Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subdivision d of subsection 4.

[2] Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The department shall define "prompt" in the permit consistent with chapter 33-15-01 and the applicable requirements.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Federal Clean Air Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to title IV of the Federal Clean Air Act, or the regulations promulgated thereunder, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Federal Clean Air Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(a) The permittee must comply with all conditions of the title V permit. Any permit noncompliance constitutes a violation of the Federal Clean Air Act and this article and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee must furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee must also furnish such records directly to the administrator of the United States environmental protection agency along with a claim of confidentiality.

(7) A provision to ensure that the source pays fees to the department consistent with the fee schedule in chapter 33-15-23.

(8) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield described in subdivision f to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this section.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements, including the state implementation plan, provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under subdivisions a and c to determine compliance;

(b) Shall extend the permit shield described in subdivision f to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of this section.

(11) If a permit applicant requests it, the department shall issue permits that contain terms and conditions, including all terms required under subdivisions a and c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements provided the changes in emissions are not modifications under title I of the Federal Clean Air Act and the changes do not exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable

requirements. The permittee shall supply written notification at least seven days prior to the change to the department and the administrator of the United States environmental protection agency and shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. The permit shield described in subdivision f shall extend to terms and conditions that allow such increases and decreases in emissions.

b. Federally enforceable requirements.

(1) All terms and conditions in a title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator of the United States environmental protection agency and citizens under the Federal Clean Air Act.

(2) Notwithstanding paragraph 1, the department shall specifically designate as not being federally enforceable under the Federal Clean Air Act any terms and conditions included in the permit that are not required under the Federal Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of subsections 6 and 7, or of this subsection, other than those contained in this subdivision.

c. Compliance requirements. All title V permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph 3 of subdivision a, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a title V permit shall contain a certification by a responsible official that meets the requirements of subdivision d of subsection 4.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to perform the following:

(a) Enter upon the permittee's premises where a title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) As authorized by the Federal Clean Air Act and this article, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with paragraph 8 of subdivision c of subsection 4.

(4) Progress reports consistent with an applicable schedule of compliance and paragraph 8 of subdivision c of subsection 4 to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards, or work practices. Permits shall include each of the following:

(a) The frequency, which is annually or such more frequent periods as specified in the applicable requirement or by the department, of submissions of compliance certifications;

(b) In accordance with paragraph 3 of subdivision a, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices. The means for monitoring shall be contained in applicable requirements or United States environmental protection agency guidance;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

[1] The identification of each term or condition of the permit that is the basis of the certification;

[2] The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period~~, and whether such methods or other means provide continuous or intermittent data~~. Such methods and other means shall include, at a minimum, the methods and means required under paragraph 3 of subdivision a~~. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information~~;

[3] The status of compliance with the terms and conditions of the permit for the period covered by the certification, <u>including whether compliance during the period was continuous or intermittent. The certification shall be</u> based on the method or means designated in item 2. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under subsection 10 occurred; and

[4] Such other facts as the department may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the administrator of the United States environmental protection agency as well as to the department; and

(e) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Federal Clean Air Act.

(6) Such other provisions as the department may require.

d. General permits.

(1) The department may, after notice and opportunity for public participation provided under subdivision h of subsection 6, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other title V permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of subdivision f, the source shall be subject to enforcement action for operation without a title V permit to operate if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Federal Clean Air Act. The department is not required to issue a general permit in lieu of individual title V permits.

(2) Title V sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or must apply for a title V permit to operate consistent with subsection 4. The department may, in the general permit, provide for applications which deviate from the requirements of subsection 4, provided that such applications meet the requirements of title V of the Federal Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under subdivision h of subsection 6, the department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

e. Temporary sources. The department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the department at least ten days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

f. Permit shield.

(1) Except as provided in this section, upon written request by the applicant, the department shall include in a title V permit to operate a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this subdivision or in any title V permit shall alter or affect the following:

(a) The provisions of section 303 of the Federal Clean Air Act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the acid rain program, consistent with section 408(a) of the Federal Clean Air Act; or

(d) The ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the Federal Clean Air Act.

g. Emergency provision.

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emissions limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emissions limitations if the conditions of paragraph 3 are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the department within one working day of the time when emissions limitations were exceeded due to the emergency. This notice fulfills the requirement of item 2 of subparagraph c of paragraph 3 of subdivision a. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement and the malfunction notification required under subdivision b of

subsection 2 of section 33-15-01-13 when a threat to health and welfare would exist.

6. **Permit issuance, renewal, reopenings, and revisions.**

a. Action on application.

(1) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(a) The department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subdivision d of subsection 5;

(b) Except for modifications qualifying for minor permit modification procedures under paragraphs 1 and 2 of subdivision e, the department has complied with the requirements for public participation under subdivision h;

(c) The department has complied with the requirements for notifying and responding to affected states under subdivision b of subsection 7;

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this section; and

(e) The administrator of the United States environmental protection agency has received a copy of the proposed permit and any notices required under subdivisions a and b of subsection 7, and has not objected to issuance of the permit under subdivision c of subsection 7 within the time period specified therein.

(2) Except for applications received during the initial transitional period described in 40 CFR 70.4(b)(11) or under regulations promulgated under title IV or title V of the Federal Clean Air Act for the permitting of affected sources under the acid rain program, the department shall take final action on each permit application, including a request for permit modification or renewal, within eighteen months after receiving a complete application.

(3) The department shall provide notice to the applicant of whether the application is complete. Unless the department requests additional information or otherwise

notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through the minor permit modification procedures, in paragraphs 1 and 2 of subdivision e, a completeness determination is not required.

(4) The department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The department shall send this statement to the United States environmental protection agency and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have a permit to construct under section 33-15-14-02.

b. Requirement for a permit.

(1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.

(2) A permit revision is not required for section 502(b)(10) changes provided:

(a) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or title I of the Federal Clean Air Act.

(b) The changes do not exceed the emissions allowable under the title V permit whether expressed therein as a rate of emissions or in terms of total emissions.

(c) A permit to construct under section 33-15-14-02 has been issued, if required.

(d) The facility provides the department and the administrator of the United States environmental protection agency with written notification at least seven days in advance of the proposed change. The written notification shall include a description of each change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

(3) A permit revision is not required for changes that are not addressed or prohibited by the permit provided:

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) The source must provide contemporaneous written notice to the department and the administrator of the United States environmental protection agency of each such change, except for changes that qualify as insignificant under the provisions of subdivision c of subsection 4. Such written notice shall describe each such change, including the date, any change in emissions, contaminants emitted, and any applicable requirement that would apply as a result of the change.

(c) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air contaminant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(d) The changes are not subject to any requirements under title IV of the Federal Clean Air Act.

(e) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act.

(f) A permit to construct under section 33-15-14-02 has been issued, if required.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

c. Permit renewal and expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and the United States environmental protection agency review, that apply to initial permit issuance; and

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subdivision b of subsection 6 and subparagraph c of paragraph 1 of subdivision a of subsection 4.

d. Administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source if the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department;

(e) Incorporates into the title V permit the requirements from a permit to construct, provided that the permit to construct review procedure is substantially equivalent to the requirements of subsections 6 and 7 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in subsection 5; or

(f) Incorporates any other type of change which the administrator of the United States environmental protection agency has approved as being an administrative permit amendment as part of the approved title V operating permit program.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the department consistent with the following:

(a) The department shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this subdivision.

(b) The department shall submit a copy of the revised permit to the administrator of the United States environmental protection agency.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request provided a permit to construct under section 33-15-14-02 has been issued, if required.

(4) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in subdivision f of subsection 5 for administrative permit amendments made pursuant to subparagraph e of paragraph 1 of subdivision d which meet the relevant requirements of subsections 5, 6, and 7 for significant permit modifications.

e. Permit modification. A permit modification is any revision to a title V permit that cannot be accomplished under the provisions for administrative permit amendments under subdivision d. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(1) Minor permit modification procedures.

(a) Criteria.

[1] Minor permit modification procedures may be used only for those permit modifications that:

[a] Do not violate any applicable requirement;

[b] Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

[c] Do not require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

[d] Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the Federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Clean Air Act;

[e] Are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act; and

[f] Are not required to be processed as a significant modification.

[2] Notwithstanding item 1 and subparagraph a of paragraph 2 of subdivision e, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan, or in applicable requirements promulgated by the United States environmental protection agency.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

[2] The source's suggested draft permit;

[3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

[4] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. Within five working days of receipt of a complete permit modification application, the department shall notify the administrator of the United States environmental protection agency and affected states of the requested permit modification. The department shall promptly send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The department may not issue a final permit modification until after the United States environmental protection agency forty-five-day review period or until the United States environmental protection agency has notified the department that the United States environmental protection agency will not object to issuance of the permit modification, whichever is first, although the department can approve the permit modification prior to that time. Within ninety days of the department's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later, the department shall:

[1] Issue the permit modification as proposed;

[2] Deny the permit modification application;

[3] Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

[4] Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by subdivision a of subsection 7.

(e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the department allows the source to make the proposed change prior to taking action specified in items 1, 2, and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(f) The permit shield under subdivision f of subsection 5 shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the department may modify the procedure outlined in paragraph 1 to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

[1] That meet the criteria for minor permit modification procedures under item 1 of subparagraph a of paragraph 1 of subdivision e; and

[2] That collectively are below the threshold level which is ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in subsection 1, or five tons [4.54 metric tons] per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

[2] The source's suggested draft permit.

[3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

[4] A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under item 2 of subparagraph a of paragraph 2 of subdivision e.

[5] Certification, consistent with subdivision d of subsection 4, that the source has notified the

United States environmental protection agency of the proposed modification. Such notification need only contain a brief description of the requested modification.

[6] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under item 2 of subparagraph a of paragraph 2 of subdivision e, whichever is earlier, the department shall meet its obligation under paragraph 1 of subdivision a of subsection 7 and paragraph 1 of subdivision b of subsection 7 to notify the administrator of the United States environmental protection agency and affected states of the requested permit modifications. The department shall send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision e within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.

(e) Source's ability to make change. The provisions of subparagraph e of paragraph 1 apply to modifications eligible for group processing.

(f) The permit shield under subdivision f of subsection 5 shall not extend to group processing of minor permit modifications.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this subsection that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of this section, including those for applications, public participation, review by affected states, and review by the United States environmental protection agency, as they apply to permit issuance and permit renewal. The department shall complete review of significant permit modifications within nine months after receipt of a complete application.

f. Reopening for cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) Additional applicable requirements under the Federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.

(b) Additional requirements, including excess emissions requirements, become applicable to an affected source under title IV of the Federal Clean Air Act or the regulations promulgated thereunder. Upon approval by the administrator of the United States environmental protection agency, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The department or the United States environmental protection agency determines that the permit contains

a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) The administrator of the United States environmental protection agency or the department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under paragraph 1 shall not be initiated before a notice of such intent is provided to the title V source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

g. Reopenings for cause by the United States environmental protection agency.

(1) If the administrator of the United States environmental protection agency finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subdivision f, within ninety days after receipt of such notification, the department shall forward to the United States environmental protection agency a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

(2) The administrator of the United States environmental protection agency will review the proposed determination from the department within ninety days of receipt.

(3) The department shall have ninety days from receipt of the United States environmental protection agency objection to resolve any objection that the United States environmental protection agency makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.

(4) If the department fails to submit a proposed determination or fails to resolve any objection, the administrator of the United States environmental protection agency will terminate, modify, or revoke and reissue the permit after taking the following actions:

(a) Providing at least thirty days' notice to the permittee in writing of the reasons for any such action.

(b) Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

h. Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be subject to procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(1) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice; to persons on a mailing list developed by the department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the department that are relevant to the permit decision; a brief description of the comment procedures required by this subsection; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled;

(3) The department shall provide such notice and opportunity for participation by affected states as is provided for by subsection 7;

(4) The department shall provide at least thirty days for public comment and shall give notice of any public hearing at least thirty days in advance of the hearing; and

(5) The department shall keep a record of the commenters and also of the issues raised during the public participation process. These records shall be available to the public.

7. **Permit review by the United States environmental protection agency and affected states.**

a. Transmission of information to the administrator.

(1) The department shall provide a copy of each permit application including any application for a permit modification (including the compliance plan), to the administrator of the United States environmental protection agency except that the applicant shall provide such information directly to the administrator of the United States environmental protection agency when directed to do so by the department. The department shall provide a copy of each proposed permit and each final title V permit to operate to the administrator of the United States environmental protection agency. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the United States environmental protection agency's national data base management system.

(2) The department may waive the requirements of paragraph 1 and paragraph 1 of subdivision b for any category of sources (including any class, type, or size within such category) other than major sources upon approval by the administrator of the United States environmental protection agency.

(3) The department shall keep these records for at least five years.

b. Review by affected states.

(1) The department shall give notice of each draft permit to any affected state on or before the time that the notice to the public under subdivision h of subsection 6 is given, except to the extent paragraphs 1 and 2 of subdivision e of subsection 6 require the timing of the notice to be different.

(2) As part of the submittal of the proposed permit to the administrator of the United States environmental protection agency (or as soon as possible after the submittal for minor permit modification procedures allowed under paragraphs 1 and 2 of subdivision e of subsection 6) the department shall notify the administrator of the United States environmental protection agency and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to

accept recommendations that are not based on applicable requirements or the requirements of this section.

c. United States environmental protection agency objection. No permit for which an application must be transmitted to the administrator of the United States environmental protection agency under subdivision a shall be issued if the administrator of the United States environmental protection agency objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.

d. Public petitions to the administrator of the United States environmental protection agency. If the administrator of the United States environmental protection agency does not object in writing under subdivision c, any person may petition the administrator of the United States environmental protection agency within sixty days after the expiration of the administrator's forty-five-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in subdivision h of subsection 6, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator of the United States environmental protection agency objects to the permit as a result of a petition filed under this subdivision, the department shall not issue the permit until the United States environmental protection agency's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five-day review period and prior to the United States environmental protection agency's objection. If the department has issued a permit prior to receipt of the United States environmental protection agency's objection under this subdivision, the department may thereafter issue only a revised permit that satisfies the United States environmental protection agency's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

e. Prohibition on default issuance. The department shall issue no title V permit to operate, including a permit renewal or modification, until affected states and the United States environmental protection agency have had an opportunity to review the proposed permit as required under this subsection.

8. **Judicial review of title V permit to operate decisions.**

a. The applicant, any person who participated in the department's public participation process, and any other person who could obtain

judicial review under North Dakota Century Code section ~~28-32-15~~ 28-32-42 may obtain judicial review provided such appeal is filed in accordance with North Dakota Century Code section ~~28-32-15~~ 28-32-42 within thirty days after notice of the final permit action.

b. The department's failure to take final action on an application for a permit, permit renewal, or permit revision within the timeframes referenced in this section shall be appealable in accordance with North Dakota Century Code section ~~28-32-15~~ 28-32-42 within thirty days after expiration of the applicable timeframes.

c. In accordance with North Dakota Century Code chapter 28-32, the mechanisms outlined in this subsection shall be the exclusive means for judicial review of permit decisions referenced in this section.

d. Solely for the purpose of obtaining judicial review in state court, final permit action shall include the failure of the department to take final action on an application for a permit, permit renewal, or permit revision within the timeframes referenced in this section.

e. Failure to take final action within ninety days of receipt of an application requesting minor permit modification procedures (or one hundred eighty days for modifications subject to group processing requirements) shall be considered final action and subject to judicial review in state court.

9. **Enforcement.** The department may suspend, revoke, or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate which has been revoked or terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.

10. **Compliance assurance monitoring.** Except as noted below, title 40, Code of Federal Regulations, part 64 compliance assurance monitoring, as it exists on January 31, ~~2002~~ 2004, is incorporated by reference.

a. "Administrator" means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the department and the administrator of the United States environmental protection agency.

b. "Part 70 permit" means a title V permit to operate.

c. "Permitting authority" means the department.

History: Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

CHAPTER 33-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

33-15-15-01. General provisions. Repealed effective February 1, 2005.

~~1. **Definitions.** For the purposes of this chapter:~~

~~a. "Actual emissions" means the actual rate of emissions of a contaminant from an emissions unit, as determined in accordance with paragraphs 1 through 4.~~

~~(1) In general, actual emissions as of a particular date must equal the average rate, in tons per year, at which the unit actually emitted the contaminant during a two-year period which precedes the particular date and which is representative of normal source operation. The department may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions must be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~

~~(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

~~(3) For any emissions unit (other than an electric utility steam generating unit specified in paragraph 4) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.~~

~~(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, provided the source owner or operator maintains and submits to the reviewing authority, on an annual basis for a period of five years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten years, may be required by the~~

~~department if it determines such a period to be more representative of normal source postchange operations.~~

~~b. "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable construction permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:~~

~~(1) Applicable standards of performance or emission limitations as set forth in this article.~~

~~(2) The emission rate specified as an enforceable permit condition.~~

~~c. "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95] in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one ug/m^3 (annual average) of the contaminant for which the minor source baseline date is established. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date in accordance with paragraph 4 of subdivision e. North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of Region No. 130, the Metropolitan Fargo-Moorhead Interstate Air Quality Control Region; and Region No. 172, the North Dakota Intrastate Air Quality Control Region (the remaining fifty-two counties).~~

~~d. (1) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each contaminant for which a minor source baseline date is established and includes:~~

~~(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph 2;~~

~~(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.~~

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increases:

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

e. (1) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975; and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to requirements of this chapter submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977; and

(b) In the case of nitrogen dioxide, February 8, 1988.

(3) The baseline date is established for each contaminant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95] for the contaminant on the date of its complete application under this chapter; and

(b) In the case of a major stationary source, the contaminant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the contaminant.

(4) Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount

~~of available PM_{10} increments, except that the department may rescind any such minor source baseline date where it can be shown by the applicant, to the satisfaction of the department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.~~

~~(5) The department shall provide a list of baseline dates for each contaminant for each baseline area.~~

~~f. "Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those onsite activities, other than preparatory activities, which mark the initiation of the change.~~

~~g. "Best available control technology" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each contaminant subject to regulation under North Dakota Century Code chapter 23-25 which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event may application of "best available control technology" result in emissions of any contaminant which would exceed the emissions allowed by any applicable standards of performance under chapters 33-15-12 and 33-15-13. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice or operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard must, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.~~

~~h. "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will~~

~~achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.~~

~~i. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "department of energy-clean coal technology", up to a total amount of two billion five hundred million dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States environmental protection agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.~~

~~j. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has obtained all necessary preconstruction permits and either has (1) begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.~~

~~k. "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.~~

~~l. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.~~

~~m. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.~~

~~n. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air contaminant regulated under North Dakota Century Code chapter 23-25; or~~

o. "Enforceable" means all limitations and conditions which are enforceable by the department pursuant to this article and any applicable requirements within the North Dakota state implementation plan.

p. "Facility, building, structure, or installation" means all of the air contaminant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Air contaminant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (United States government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

q. "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

r. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

s. "High terrain" means any area having an elevation nine hundred feet [271.32 meters] or more above the base of the stack of a source.

t. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

u. "Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

v. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

w. "Low terrain" means any area other than high terrain.

x. "Major modification" means any physical change in, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any air contaminant subject to regulation under North Dakota Century Code chapter 23-25.

(1) Any net emissions increase that is significant for volatile organic compounds must be considered significant for ozone.

(2) A physical change or change in the method of operation does not include:

(a) Routine maintenance, repair, and replacement.

(b) Use of an alternate fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(c) Use of an alternate fuel or raw material by a stationary source which:

[1] The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any state enforceable permit condition which was established after January 6, 1975, pursuant to this chapter or under regulations approved pursuant to North Dakota Century Code chapter 23-25; or

[2] The source is approved to use under any permit issued under regulations approved pursuant to North Dakota Century Code chapter 23-25.

(d) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to and in accordance with this chapter, section 33-15-14-02, or section 33-15-14-03.

(e) Any change in ownership of a stationary source.

(f) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act [Pub. L. 95-95].

(g) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(h) The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the administrator of the United States environmental protection agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

[1] When the administrator of the United States environmental protection agency has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted, if any; and

[2] The administrator of the United States environmental protection agency determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

[1] The North Dakota state implementation plan; and

[2] Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

y. "Major stationary source" means:

(1) Any of the following stationary sources of air contaminants which emit, or have the potential to emit, one hundred tons [90718.17 kilograms] per year or more of any air contaminant regulated under North Dakota Century Code chapter 23-25: coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mills, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred fifty tons [226796.19 kilograms] of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers and fossil fuel-fired steam electric plants (or combinations thereof) of more than two hundred fifty million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production facilities.

(2) Notwithstanding the source sizes in paragraph 1, such term also includes any stationary source which emits, or has the potential to emit, two hundred fifty tons [226796.19 kilograms] per year or more of any air contaminant regulated under North Dakota Century Code chapter 23-25 or as outlined in paragraph 3.

(3) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph 1 as a major stationary source, if the changes would constitute a major stationary source by itself.

(4) A major source that is major for volatile organic compounds shall be considered major for ozone.

(5) The fugitive emissions of a stationary source may not be included in determining for any of the purposes of this subdivision whether it is a major stationary source unless the source belongs to one of the categories of stationary sources in paragraph 1 and any other stationary source category which as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

z. "Necessary preconstruction permits" means those permits required under this article.

~~aa. "Net emissions increase" means the amount by which the sum of the following exceeds zero:~~

~~(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and~~

~~(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.~~

~~(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:~~

~~[1] The date five years before construction on the particular change commences; and~~

~~[2] The date that the increase from the particular change occurs.~~

~~(b) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this article, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

~~(c) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions can be used to evaluate the net emissions increase for PM_{10}.~~

~~(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(e) A decrease in actual emissions is creditable only to the extent that:~~

~~[1] The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;~~

~~[2] It is enforceable at and after the time that actual construction on the particular change begins; and~~

[3] It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

bb. "Pollution control project" means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from each unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls, and electrostatic precipitators.

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions.

(3) A permanent clean coal technology demonstration project conducted under title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of two billion five hundred million dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the United States environmental protection agency.

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

cc. "Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design if the limitation or the effect it would have on

~~emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.~~

~~dd. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation when the unit:~~

~~(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment.~~

~~(2) Was equipped prior to shutdown with a continuous system or emissions control that achieves a removal efficiency of sulfur dioxide of no less than eighty-five percent and a removal efficiency of particulates of no less than ninety-eight percent.~~

~~(3) Is equipped with low-nitrogen oxide burners prior to the time of commencement of operations following reactivation.~~

~~(4) Is otherwise in compliance with the requirements of the Clean Air Act.~~

~~ee. "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit (or a different consecutive two-year period within ten years after that change, where the department determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the department shall:~~

~~(1) Consider all relevant information, including historical operational data, the company's own representations, filings with the state or federal regulatory authorities, and compliance plans under title IV of the Federal Clean Air Act.~~

~~(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change,~~

~~including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.~~

~~ff. "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combination cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator of the United States environmental protection agency, in consultation with the secretary of energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.~~

~~(1) Repowering shall also include any unit fired by oil or gas, or both, which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the department of energy.~~

~~(2) The administrator of the United States environmental protection agency shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Federal Clean Air Act.~~

~~gg. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general areas as the major stationary source or major modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source.~~

~~hh. "Significant" means:~~

~~(1) In reference to a net emissions increase or the potential of a source to emit any of the following air contaminants, a rate of emissions that would equal or exceed any of the following rates:~~

~~Air Contaminant and Emissions Rate~~

~~Carbon monoxide: 100 tons per year~~

~~Nitrogen oxides: 40 tons per year~~

~~Sulfur dioxide: 40 tons per year~~

~~Particulate matter: 25 tons per year of particulate matter emissions; 15 tons per year of PM_{10} emissions~~

~~Ozone: 40 tons per year of volatile organic compounds~~

~~Lead: 0.6 ton per year~~

~~Fluorides: 3 tons per year~~

~~Sulfuric acid mist: 7 tons per year~~

~~Hydrogen sulfide (H_2S): 10 tons per year~~

~~Total reduced sulfur (including H_2S): 10 tons per year~~

~~Reduced sulfur compounds (including H_2S): 10 tons per year~~

~~Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 \cdot 10^{-6}$ megagrams per year ($3.5 \cdot 10^{-6}$ tons per year)~~

~~Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)~~

~~Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)~~

~~Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)~~

~~(2) In reference to a net emissions increase or the potential of a source to emit an air contaminant subject to regulation under North Dakota Century Code chapter 23-25 that paragraph 1 does not list, any emissions rate.~~

(3) Notwithstanding paragraph 1, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers [6.21 miles] of a class I area, and have an impact on such area equal to or greater than one $\mu g/m^3$ (twenty-four-hour average).

ii. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air contaminant regulated under North Dakota Century Code chapter 23-25.

jj. "Total suspended particulate (TSP)" means particulate matter as measured by the method described in appendix B of 40 CFR 50.

2. **Significant deterioration of air quality - Area designation and deterioration increment.**

a. The provisions of this chapter apply to those counties or other functionally equivalent areas that are designated as attainment or unclassifiable for any of the national ambient air quality standards.

b. For purposes of this chapter, areas designated as class I, II, or III shall be limited to the following increases in contaminant concentration over the baseline concentration:

Area Designations

Pollutant	Class I ($\mu g/m^3$)	Class II ($\mu g/m^3$)	Class III ($\mu g/m^3$)
Particulate matter:			
PM_{10}, Annual arithmetic mean	4	17	34
PM_{10}, 24-hour maximum	8	30	60
Sulfur dioxide:			
Annual arithmetic mean	2	20	40
24-hour maximum	5	91	182
3-hour maximum	25	512	700
Nitrogen dioxide:			
Annual arithmetic mean	2.5	25	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any receptor site.

Any conflict between an applicable increment and an applicable ambient air quality standard shall be resolved in favor of the more

~~stringent limitation and the source shall be limited to such more stringent limitation.~~

~~c. All of the following areas which were in existence on August 7, 1977, are hereby designated class I areas and may not be redesignated:~~

~~(1) The Theodore Roosevelt National Park -- north and south units in Billings and McKenzie Counties, and the Theodore Roosevelt Elkhorn Ranch Site in Billings County.~~

~~(2) The Lostwood National Wilderness Area in Burke County.~~

~~All other areas of the state are hereby designated class II areas but may be redesignated as provided in this subsection.~~

~~d. The following areas may be redesignated only as class I or II:~~

~~(1) An area which as of August 7, 1977, exceeds ten thousand acres [4046.86 hectares] in size and is a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore, or seashore.~~

~~(2) A national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres [4046.86 hectares] in size.~~

~~e. Exclusions from increment consumption:~~

~~(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase in contaminant concentration:~~

~~(a) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both, by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such order;~~

~~(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;~~

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which increases have been approved in advance by the department under an approved state implementation plan revision.

(2) No exclusion of such concentrations shall apply more than five years after the effective date of the order to which subparagraph a or b of paragraph 1 refers, whichever is applicable. If both such order and plan are applicable, no such exclusion applies more than five years after the later of such effective dates.

(3) For purposes of excluding concentrations pursuant to subparagraph e of paragraph 1:

(a) The time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur must be specified. Such time may not exceed two years in duration unless a longer time is approved by the administrator of the United States environmental protection agency.

(b) The time period for excluding certain contributions in accordance with subparagraph a is not renewable.

(c) No emissions increase from a stationary source may:

[1] Impact a class I area or an area where an applicable increment is known to be violated; or

[2] Cause or contribute to the violation of any ambient air quality standards.

(d) The emission levels from the stationary sources effected at the end of the time period specified in accordance with subparagraph a may not exceed

those levels occurring from such sources before the temporary increases in emissions were approved.

f. The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.

3. **Stack heights.** The stack height for any source subject to this chapter must meet the requirements of chapter 33-15-18.

4. **Review of new major stationary sources and major modifications.**

a. Applicability. The requirements of this chapter shall apply to any major new stationary source or modification which:

(1) Had not been issued a permit to construct or modify prior to March 1, 1978;

(2) Had not commenced construction prior to March 19, 1979; or

(3) Has discontinued construction for a period of eighteen months or more and has not completed construction within a reasonable time.

Review of these sources or modifications must be conducted in conjunction with the issuance of permits to construct pursuant to section 33-15-14-02.

b. Permits - general.

(1) No source subject to this chapter may be constructed in any area unless:

(a) A permit has been issued for such proposed source in accordance with this chapter setting forth emission limitations or equipment standards for such source which conform to the requirements of this chapter and any conditions necessary to ensure that the proposed source will meet such limits or standards;

(b) The requirements of subdivisions c through k, as applicable, have been met; and

(c) The proposed permit has been subject to a review in accordance with this chapter, the required analysis has

been conducted in accordance with the requirements of this chapter, and the procedures for public participation as defined in subsection 5 have been followed.

(2) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

c. Control technology review.

(1) A major stationary source or major modification shall meet all applicable emission limitations under the state implementation plan and all applicable emission standards and standards of performance of this article.

(2) A new major stationary source shall apply best available control technology for each air contaminant subject to regulation under North Dakota Century Code chapter 23-25 that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each air contaminant subject to regulation under North Dakota Century Code chapter 23-25 for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the air contaminant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology must be reviewed and modified as appropriate at the latest reasonable time which occurs no later than eighteen months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

d. Exemptions from impact analysis.

(1) The requirements of subdivisions e, g, and i do not apply to a major stationary source or major modification with respect to a particular air contaminant, if the allowable emissions from the source, or the net emissions increase of that contaminant from the modification:

(a) Would impact no class I area and no area where an applicable increment is known to be violated; and

(b) Would be temporary.

(2) The requirements of subdivisions e, g, and i as they relate to any maximum allowable increase for a class II area do not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each air contaminant regulated under North Dakota Century Code chapter 23-25 from the modification after the application of best available control technology would be less than fifty tons [45359.24 kilograms] per year.

(3) The department may exempt a stationary source or modification from the requirements of subdivision g with respect to monitoring for a particular air contaminant if:

(a) The emissions increase of the air contaminant from the new source or the net emissions increase of the air contaminant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 $\mu g/m^3$, 8-hour average

Nitrogen dioxide - 14 $\mu g/m^3$, annual average

Particulate matter - 10 $\mu g/m^3$ of PM_{10}, 24-hour average

Sulfur dioxide - 13 $\mu g/m^3$, 24-hour average

Ozone - No de minimus level

Lead - 0.1 $\mu g/m^3$, 3-month average

Mercury - 0.25 $\mu g/m^3$, 24-hour average

Beryllium - 0.001 $\mu g/m^3$, 24-hour average

Fluorides - 0.25 $\mu g/m^3$, 24-hour average

Vinyl chloride - 15 $\mu g/m^3$, 24-hour average

Total reduced sulfur - 10 $\mu g/m^3$, 1-hour average

Hydrogen sulfide - 0.2 $\mu g/m^3$, 1-hour average

~~Reduced sulfur compounds - 10 µg/m^3, 1-hour average; or~~

~~(b) The concentrations of the air contaminant in the area that the source or modification would affect are less than the concentrations listed in subparagraph a or the air contaminant is not listed in subparagraph a.~~

~~(4) The requirements for best available control technology in subdivision c and the requirements for air quality analyses in paragraph 1 of subdivision g do not apply to a particular stationary source or modification that was subject to this chapter if the owner or operator of the source or modification submitted an application for a permit before May 7, 1981, and the department subsequently determines the application as submitted before that date was complete. Instead, the requirements of subdivisions c and h as in effect prior to May 7, 1981, apply to any such source or modification.~~

~~(5) The requirements for air quality monitoring in subparagraphs b, c, and d of paragraph 1 of subdivision g do not apply to:~~

~~(a) A particular source or modification that was subject to this chapter as in effect prior to May 7, 1981, if the owner or operator of the source or modification submitted an application for a permit under this chapter on or before June 8, 1981, and the department subsequently determined that the application as submitted before that date was complete with respect to the requirements of this chapter other than those in subparagraphs b, c, and d of paragraph 1 of subdivision g and with respect to the requirements for such analyses in paragraph 2 of subdivision g as in effect prior to May 7, 1981. Instead, the requirements of this chapter prior to May 7, 1981, shall apply to any source or modification.~~

~~(b) A particular source or modification that was not subject to this chapter as in effect prior to May 7, 1981, if the owner or operator of the source or modification submitted an application for a permit under this chapter on or before June 8, 1981, and the department subsequently determined that the application as submitted before that date was complete, except with respect to the requirements in subparagraphs b, c, and d of paragraph 1 of subdivision g.~~

(6) The requirements of subdivisions c, e, f, g, h, i, and j and subsections 5 and 6 in their entirety do not apply to a particular major stationary source or major modification, if:

(a) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the stationary sources of air contaminants listed in subdivision u of subsection 1 and any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act [Pub. L. 95-95].

(b) The source is a portable stationary source which has previously received a permit under this chapter and:

[1] The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary.

[2] The emissions from the source would not exceed its allowable emissions.

[3] The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated.

[4] Reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the department not less than ten days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(c) With respect to a particular air contaminant, the owner or operator demonstrates that the source or modification is located in an area designated as nonattainment by the administrator of the United States environmental protection agency, as to that air contaminant, under this article.

(d) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and

~~the governor requests that it be exempt from such requirements.~~

~~e. Source impact analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions) from any other sources, will not cause or contribute to air pollution in violation of:~~

~~(1) Any ambient air quality standard in any area; or~~

~~(2) Any applicable maximum allowable increase over the baseline concentration in any area.~~

~~f. Air quality models.~~

~~(1) All estimates of ambient concentrations required under this section must be based on the applicable air quality models, data bases, and other requirements specified in the "Guidelines on Air Quality Models" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of environmental engineering). These documents are incorporated by reference.~~

~~(2) When an air quality impact model specified in the documents incorporated by reference in paragraph 1 is inappropriate, the model may be modified or another model substituted provided:~~

~~(a) Any modified or nonguideline model must be subjected to notice and opportunity for public comment under subsection 5.~~

~~(b) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711).~~

~~(c) Written approval from the department must be obtained for any modification or substitution prior~~

to an application being designated complete by the department.

(d) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.

9. Air quality analysis.

(1) Preapplication analysis.

(a) Any application for a permit under this section must contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following air contaminants:

[1] For the source, each air contaminant that it would have the potential to emit in a significant amount; and

[2] For the modification, each air contaminant for which it would result in a significant net emissions increase.

(b) With respect to any such air contaminant for which no ambient air quality standard exists, the analysis must contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that air contaminant in any area that the emissions of that air contaminant would affect.

(c) With respect to any such air contaminant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis must contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that air contaminant would cause or contribute to a violation of the standard or any maximum allowable increase.

(d) In general, the continuous air quality monitoring data that are required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application except that if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the

~~data that are required shall have been gathered over at least that shorter period.~~

~~(e) For any application which becomes complete, except as to the requirements of subparagraphs c and d, between June 8, 1981, and February 9, 1982, the data that subparagraph c requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:~~

~~[1] If the source or modification would have been major for that air contaminant under this chapter as in effect prior to May 7, 1981, any monitoring data shall have been gathered over at least the period required by those rules.~~

~~[2] If the department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subparagraph c requires shall have been gathered over at least that shorter period.~~

~~[3] If the monitoring data would relate exclusively to ozone and would not have been required under this chapter as in effect prior to May 7, 1981, the department may waive the otherwise applicable requirements of this subparagraph to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.~~

~~(f) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR, part 51, appendix S, section IV may provide postapproved monitoring data for ozone in lieu of providing preconstruction data as required under paragraph 1.~~

~~(2) Postconstruction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.~~

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR, part 58, appendix B during the operation of monitoring stations for purposes of satisfying subdivision g.

h. Source information. The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis to make any determination required under this article. Such information must include:

(1) A description of the nature, location, design capacity, and typical operating schedule of the proposed source or modification, including specifications and drawings showing the design and plant layout.

(2) A detailed schedule for construction of the source or modification.

(3) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information necessary to determine best available control technology.

(4) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact.

(5) Information on the air quality impacts and the nature and extent of general commercial, residential, industrial, and other growth which has occurred since the baseline date in the area the source or modification would affect.

i. Additional impact analyses.

(1) The owner or operator shall provide an analysis of the impairment to visibility, (in accordance with chapter 33-15-19) soils and vegetation, and wildlife that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis on vegetation or wildlife having no significant commercial or recreational value except for endangered and threatened species as identified by the United States fish and wildlife service.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of the

~~general commercial, residential, industrial, and other growth associated with the source or modification.~~

~~j. Sources impacting federal class I areas - additional requirements.~~

~~(1) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.~~

~~(2) Notice to federal land managers. The department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification must include a copy of all information relevant to the permit application and must be given within thirty days of receipt and at least sixty days prior to any public hearing on the application for a permit to construct. Such notification must include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under subsection 5 and shall make available to them any materials used in making that determination, promptly after the department makes such determination. Finally, the department shall also notify all affected federal land managers within thirty days of receipt of any advance notification of any such permit application.~~

~~(3) Denial - impact on air quality-related values. A federal land manager may present to the department, after reviewing the department's preliminary determination required under subsection 5, a demonstration that the emission from an applicable source will have an adverse impact on the air quality-related values (including visibility) of federal mandatory class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area. If the department concurs with such demonstration, the permit may not be issued.~~

~~(4) Class I variances.~~

~~(a) The owner or operator of a proposed source may demonstrate to the federal land manager that the emissions from such source or modification will have no adverse impact on the air quality-related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification will cause or contribute to concentrations which exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and the manager so certifies to the department, the department may issue the permit pursuant to the requirements of subparagraph b; provided, that the applicable requirements of this chapter are otherwise met.~~

~~(b) In the case of a permit issued pursuant to subparagraph a, such source or modification shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the following maximum allowable increases over the minor source baseline concentration for such contaminants:~~

	~~Maximum allowable increase (micrograms per cubic meter)~~
~~Particulate matter:~~	
~~PM_{10}, Annual arithmetic mean~~	~~17~~
~~PM_{10}, 24-hour maximum~~	~~30~~
~~Sulfur dioxide:~~	
~~Annual arithmetic mean~~	~~20~~
~~24-hour maximum~~	~~91~~
~~3-hour maximum~~	~~325~~
~~Nitrogen dioxide:~~	
~~Annual arithmetic mean~~	~~25~~

~~(5) Sulfur dioxide variance by governor with federal land manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under paragraph 4 may demonstrate to the governor, that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I~~

area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality-related values of the area, including visibility. The governor, after consideration of the federal land manager's recommendation, if any, and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the department shall issue a permit to such source or modification pursuant to the requirements of paragraph 7; provided, that the applicable requirements of this chapter are otherwise met.

(6) Variance by the governor with the president's concurrence. If the governor recommends a variance under this subdivision in which the federal land manager does not concur, the recommendations of the governor and the federal land manager must be transmitted to the president. The president may approve the governor's recommendation if the president finds that such variance is in the national interest. If such a variance is approved, the department shall issue a permit pursuant to the requirements of paragraph 7; provided, that the applicable requirements of this chapter are otherwise met.

(7) Emission limitations for presidential or gubernatorial variances. In the case of a permit issued pursuant to paragraph 5 or 6, the source or modification shall comply with emission limitations under such permit as may be necessary to assure that emissions of sulfur dioxide from such source or modification, during any day on which the otherwise applicable maximum allowable increases are exceeded, will not cause or contribute to concentrations which exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions will not cause or otherwise contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four hours or less for more than eighteen days, not necessarily consecutive, during any annual period:

Maximum allowable increase (micrograms per cubic meter)		
Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

k. Proposed redesignations. If an owner or operator applies for permission to construct pursuant to this chapter and the proposed source or modification would impact on an area which has

~~previously been proposed for redesignation to a more stringent class by the department, an Indian governing body, or another state, or the state or Indian governing body has announced such consideration, approval may not be granted until the proposed redesignation has been acted upon. However, approval must be granted if, in the department's judgment, the proposed source would not violate the increments that would be applicable if the redesignation is approved. The department shall withhold approval under this subdivision only so long as another state or Indian governing body is actively and expeditiously proceeding toward redesignation.~~

~~If an owner or operator has applied for permission to construct pursuant to this chapter and whose application has been deemed complete by the department prior to the public announcement of a proposed redesignation of an area to a more stringent class and if such facility would impact on the area proposed for redesignation, the application shall be processed considering the classification of the area which existed at the time the application was deemed complete.~~

~~5. **Public participation.**~~

~~a. Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.~~

~~b. Within one year after receipt of a completed application, the department shall:~~

~~(1) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.~~

~~(2) Make available in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.~~

~~(3) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the~~

~~application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source.~~

~~(4) Send a copy of the notice required in paragraph 3 to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the locations where the source or modification will be situated as follows: local air pollution control agencies, the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.~~

~~(5) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.~~

~~(6) Consider all public comments submitted in writing within a time specified in the public notice required in paragraph 3 and all comments received at any public hearing conducted pursuant to paragraph 5 in making its final decision on the approvability of the application. No later than ten days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The department shall consider the applicant's response in making its final decision. All comments must be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.~~

~~(7) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.~~

(8) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

6. **Source obligation.**

a. Any owner or operator who constructs or operates a stationary source or modification not in accordance with the application, submitted pursuant to subsection 4 or with the terms of any permit to construct, or any owner or operator of a stationary source or modification subject to this chapter who commences construction after the effective date of this chapter without applying for and receiving a permit to construct hereunder, shall be subject to enforcement action under North Dakota Century Code section 23-25-10.

b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

c. A permit to construct does not relieve any owner or operator of the responsibility to comply fully with the applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

d. At such time that a particular source or modification becomes a major stationary source or modification solely by virtue of a relaxation in any enforceable limit which was established after May 7, 1980, on the capacity of the source or modification otherwise to emit an air contaminant, such as a restriction on hours of operation, then the requirements of subdivisions c, e, f, g, h, i, and j and the requirements of this section and subsections 5 and 7 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

~~7. **Innovative control technology.**~~

~~a. An owner or operator of a proposed major stationary source or major modification may request the department in writing to approve a system of innovative control technology.~~

~~b. The department shall, with the consent of the governors of all affected states, determine that the source or modification may employ a system of innovative control technology, if:~~

~~(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.~~

~~(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph 2 of subdivision c of subsection 4 by a date specified by the department. Such date may not be later than four years from the time of startup or seven years from permit issuance.~~

~~(3) The source or modification would meet the requirements of subdivisions c and e of subsection 4 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department.~~

~~(4) The source or modification would not before the date specified by the department:~~

~~(a) Cause or contribute to a violation of an applicable ambient air quality standard; or~~

~~(b) Impact any area where an applicable increment is known to be violated.~~

~~(5) The provisions of subdivision j of subsection 4, relating to class I areas, have been satisfied with respect to all periods during the life of the source or modification.~~

~~(6) All other applicable requirements including those for public participation have been met.~~

~~c. The department shall withdraw any approval to employ a system of innovative control technology made under this section, if:~~

~~(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;~~

~~(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or~~

~~(3) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.~~

~~d. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subdivision c, the department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.~~

History: ~~Amended effective July 1, 1982; October 1,1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; June 1, 2001; March 1, 2003.~~
General Authority: ~~NDCC 23-25-03, 23-25-04.1~~
Law Implemented: ~~NDCC 23-25-03, 23-25-04.1~~

33-15-15-01.1. Purpose. The purpose of this chapter is to adopt by reference federal provisions for the prevention of significant deterioration program in North Dakota. The department will continue to implement the prevention of significant deterioration program as part of the state implementation plan.

History: Effective February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (f), (h) through (r), and (v) through (bb) as they exist on October 1, 2003, are incorporated by reference into this chapter. Any changes or additions to the provisions are listed below the affected paragraph.

For purposes of this chapter, administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties listed below, or any others that cannot be delegated, administrator means the administrator of the United States environmental protection agency:

(b)(17) - Definition of federally enforceable.

(b)(37)(i) - Definition of repowering.

(b)(42) - Definition of clean unit.

(b)(43) - Definition of prevention of significant deterioration.

(b)(48)(ii)(c) - Definition of baseline actual emissions.

(b)(50)(i) - Definition of regulated NSR pollutant.

(1)(2) - Air quality models.

(p)(2) - Consultation with the federal land manager.

(y)(4)(i) - First sentence only - Comparison to previous reasonably available control technology and lowest achievable emission rate determinations.

For purposes of this chapter, permit or approval to construct means a permit to construct. The procedures for obtaining a permit to construct are specified in section 33-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term "40 CFR 52.21" is replaced with "this chapter".

40 CFR 52.21(b)(3)(iii)(a)	The words "the administrator or other reviewing authority" are replaced with "the department or the administrator of the United States environmental protection agency".
40 CFR 52.21(b)(14)	The following is added: (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.
40 CFR 52.21(b)(15)	The following is added: (iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of region no. 130, the metropolitan Fargo-Moorhead interstate air quality control region; and region no. 172, the North Dakota intrastate air quality control region (the remaining fifty-two counties).
40 CFR 52.21(b)(22)	The following is added: Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
40 CFR 52.21(b)(29)	The following is added:

	This term does not include effects on integral vistas.
40 CFR 52.21(b)(30)	The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".
40 CFR 52.21(b)(43)	The paragraph is deleted in its entirety and replaced with the following: Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the United States environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.
40 CFR 52.21(b)(48)(ii)	The following words are deleted: "by the administrator for a permit required under this section or".
40 CFR 52.21(b)(51)	The paragraph is deleted in its entirety and replaced with the following: Reviewing authority means the department.
40 CFR 52.21(b)(53)	This paragraph is deleted in its entirety and replaced with the following: Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.
40 CFR 52.21(b)(54)	This paragraph is deleted in its entirety and replaced with the following: Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.
40 CFR 52.21(d)	The paragraph is deleted and replaced with the following: No concentration of a contaminant shall exceed the ambient air quality standards in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States.
40 CFR 52.21(e)	The following is added: (5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.

40 CFR 52.21(h)		The paragraph is deleted and replaced with the following:
		The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.
40 CFR 52.21(i)		The following subparagraphs are added:
	(11)	The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.
	(12)	Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.
40 CFR 52.21(k)(1)		This subparagraph is deleted and replaced with the following:
	(1)	Any ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or
40 CFR 52.21(l)(1)		This subparagraph is deleted and replaced with the following:
		All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix w of 40 CFR 51 ("guideline on air quality models" as it exists on January 30, 2004) as supplemented by the "North Dakota guideline for air quality modeling analyses". These documents are incorporated by reference. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.
40 CFR 52.21(m)(3)		"Appendix B to part 58 of this chapter" is replaced with 40 CFR 58, appendix B.
40 CFR 52.21(o)(1)		The following is added:

	The visibility analysis shall be prepared in accordance with chapter 33-15-19.
40 CFR 52.21(p)(6)	"paragraph (g)(4)" is replaced with "paragraph (p)(4)" and "(g)(7)" is replaced with "(p)(7)".
40 CFR 52.21(p)(7)	"paragraph (g)(7)" is replaced with "paragraph (p)(7)".
40 CFR 52.21(p)(8)	"paragraphs (g)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)".
40 CFR 52.21(p)	The following is added:
	(9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.
40 CFR 52.21(q)	This paragraph is deleted and replaced with the following:

q. Public participation.

(1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.

(2) Within one year after receipt of a completed application, the department shall:

(a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

(b) Make available, in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the

applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.

(c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least thirty days for public comment.

(d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.

(e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

(f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than ten days after the close of the public comment period, the applicant may submit

a written response to any comments submitted by the public. The department shall consider the applicant's response in making its final decision. All comments must be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.

(g) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

(h) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

40 CFR 52.21(r)(2) The following is added:

In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

40 CFR 52.21(v)(1) This subparagraph is deleted and replaced with the following:

(1) An owner or operator of any proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

40 CFR 52.21(v)(2)(iv)(a) This subitem is deleted and replaced with the following:

(a) Cause or contribute to a violation of an applicable ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or

40 CFR 52.21(w)(1) This subparagraph is deleted and replaced with the following:

(1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

40 CFR 52.21(y)(3)(ii)	The item is deleted in its entirety and replaced with the following: Impact of emissions from the unit. The department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard in chapter 33-15-02 in areas subject to regulation under this article or the national ambient air quality standards in all other areas of the United States, will not cause or contribute to any violation of a PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.
40 CFR 52.21(y)(7)	This paragraph is deleted in its entirety and replaced with the following: Procedures for designating emission units as clean units. The department shall designate an emissions unit a clean unit only by issuing a permit under section 33-15-14-02. The public shall be provided notice of the permit and provided the opportunity for comment. The procedures for public notice and public comment shall be those in paragraph (g)(2) of this section.
40 CFR 52.21(z)(5)	This paragraph is deleted in its entirety and replaced with the following: Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in paragraphs (b)(32)(i) through (vi) of this section, the project must be approved by the department and recorded in a permit to construct under section 33-15-14-02. The department shall provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality effects analysis. The department shall provide at least a thirty-day period for the public and the administrator of the environmental protection agency to submit comments. Public comment procedures must comply with the requirements of paragraph (g)(2) of this section. The department shall address all comments received by the end of the comment period before issuing the permit to construct.
40 CFR 52.21(aa)(15)	This paragraph is deleted in its entirety and replaced with the following:

(i) The department shall not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this section after the administrator of the environmental protection agency has approved regulations incorporating these requirements into the state implementation plan.

(ii) The department may supersede any PAL which was established prior to the date of approval of the state implementation plan by the administrator of the United States environmental protection agency with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

History: Effective February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-02. Reclassification.

1. **Reclassification of areas.** All areas (except as otherwise provided under ~~subdivisions c and d of subsection 2 of section 33-15-15-01~~ 40 CFR 52.21(e)) must be designated either class I, class II, or class III. Any designation other than class II is subject to the redesignation procedures of this section. Redesignation (except as otherwise precluded by ~~subdivision c or d of subsection 2 of section 33-15-15-01~~ 40 CFR 52.21(e)) is subject to approval by the administrator of the United States environmental protection agency.

   a. Reclassification by petition.

      (1) Filing of petition. After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition for reclassification only if such reclassification is substantially supported by the hearing record.

      (2) Contents of petition. The petition ~~for petitioning the department~~ to reclassify any area to either class I, class II, or class III ~~as specified in subdivision b of subsection 2~~

~~of section 33-15-15-01~~ must contain a legal description of the area which the petition is to affect; an explanation of the meaning and purpose of the petition and reclassification; a statement to the effect that those persons signing the petition desire the described area to be reclassified to either class I, class II, or class III and such statement must specify which class; a list of those persons or person circulating such petition, which persons must be designated "Committee of Petitioners"; an affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated such petition and that each of the signatures to such petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated; all petitions' signatures must be numbered and dated by month, day, and year, and the name must be written with residence address and post-office address including the county of residence followed by state of North Dakota.

b. Reclassification upon department's own motion. At such time as the department may determine, it may hold a public hearing and take such other action as specified in subsection 2 in order to reclassify any area of this state (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III. The department shall reclassify the area proposed for reclassification only if such reclassification is substantially supported by the hearing record.

2. **Procedures for reclassification.**

a. ~~The~~ Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to either class I or class II pursuant to subdivisions a and b of subsection 1, provided that:

(1) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with the procedures established in subsection 3.

(2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation are notified at least thirty days prior to the public hearing.

(3) A discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation is prepared and made available

for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion.

(4) Prior to the issuance of notice respecting the redesignation of any area that includes any federal lands, the state shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty days) to confer with the state respecting the redesignation and to submit written comments and recommendations with respect to such redesignation. In redesignating any area with respect to which any federal land manager has submitted written comments and recommendations, the state shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager).

(5) The proposed redesignation is based on the record of the state's hearing, which must reflect the basis for the proposed redesignation, including consideration of:

(a) Growth anticipated in the area.

(b) The social, environmental, health, energy, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and states.

(c) Any impacts of such proposed redesignation upon regional or national interests. Anticipated growth shall include growth resulting both directly and indirectly from proposed development.

(6) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

b. ~~The~~ Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian ~~reservation~~ reservations, ~~other than an area referred to in subdivision e of subsection 2 of section 33-15-15-01 or an area established as class I under subdivision d of subsection 2 of section 33-15-15-01~~ to class III if:

(1) Such redesignation would meet the requirements of subdivision a.

(2) Such redesignation has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislative assembly if it is in session or with the leadership of the legislative assembly if it is not in session, and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation or pass resolutions concurring the state's redesignation.

(3) Such redesignation will not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area, or any applicable ambient air quality standard.

(4) Prior to any public hearing on redesignation of any area, there must be available, insofar as is practicable for public inspection, any specific plans for any new major stationary source or major modification which may be permitted to be constructed and operated only if the area in question is redesignated as class III.

3. **Reclassification hearings.**

a. Any hearing required by subsection 2 shall be held only after reasonable notice, which shall be considered to include, at least thirty days prior to the date of such hearing:

(1) Notice given to the public by prominent advertisement in the region affected announcing the date, time, and place of such hearing.

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.

(3) Notification to the administrator of the United States environmental protection agency (through the appropriate regional office).

(4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply.

(5) In the case of an interstate region, notification to any other states included, in whole or in part, in the region.

(6) Notification to any states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation.

b. The department shall prepare and retain for inspection a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

c. Any hearing held pursuant to the provisions of this subsection must be held only for the purpose of considering such reclassification as has been noticed under the provisions of subsection 2, and consideration of reclassification to other classes not so noticed shall not be allowed.

d. Any hearing held pursuant to these provisions may be continued for such purposes and for such periods of time as the department may determine.

4. **Time limitation.** Notwithstanding any other regulation herein, the department shall rule upon any proposed reclassification within eighteen months of the official public notification of such proposed redesignation by the department.

History: Amended effective July 1, 1982; October 1, 1987; January 1, 1989; February 1, 2005.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-21-08.1. Permits. The provisions of title 40, Code of Federal Regulations, part 72, as they exist on January 31, ~~2002~~ 2004, for purposes of implementing an acid rain program that meets the requirements of title IV of the federal Clean Air Act, are incorporated into this chapter by reference. The term "administrator" means the department except for those duties that cannot be delegated to the department. For those duties that cannot be delegated, "administrator" means the administrator of the United States environmental protection agency. If the provisions or requirements of title 40, Code of Federal Regulations, part 72, conflict with or are not included in section 33-15-14-06, the provisions of part 72 shall apply and take precedence.

History: Effective June 1, 2001; amended effective March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03, 23-01-04.1
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-09. Continuous emissions monitoring.

1. **General.** The monitoring, recordkeeping, and reporting of sulfur dioxide, nitrogen oxides, and carbon dioxide emissions, volumetric flow, and opacity data from affected units under the acid rain program shall be conducted in accordance with title 40, Code of Federal Regulations, part 75, as it exists on January 31, ~~2002~~ 2004.

2. **Exceptions.** Those portions of title 40, Code of Federal Regulations, part 75, that are controlled and administered completely by the United States environmental protection agency will not be enforced by the state. This should not be construed as precluding the United States environmental protection agency from exercising its statutory authority under the Clean Air Act, as amended, or an affected source from complying with the authority or the requirements of the federal acid rain program.

History: Effective December 1, 1994; amended effective June 1, 2001; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-10. Acid rain nitrogen oxides emission reduction program. Title 40, Code of Federal Regulations, part 76 and its appendices, as they exist on January 31, ~~2002~~ 2004, are incorporated into this chapter by reference.

History: Effective April 1, 1998; amended effective June 1, 2001; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-01-04.1, 23-25-03

CHAPTER 33-15-22

33-15-22-01. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 63, as they exist on January 31, ~~2002~~ 2004, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-22-02. Definition. For the purposes of this chapter, "administrator" means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the ~~department and the~~ administrator of the United States environmental protection agency.

History: Effective December 1, 1994; amended effective February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-22-03. Emissions standards.

Subpart A - General provisions.

Subpart B - Requirements for control technology determinations for major sources in accordance with Federal Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emissions standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emissions standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emissions standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emissions standards for drycleaning facilities.

Subpart N - National emissions standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emissions standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emissions standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emissions standards for halogenated solvent cleaning.

Appendix A to subpart T - Test of solvent cleaning procedures.

Appendix B to subpart T - General provisions applicability to subpart T.

Subpart W - National emissions standards for hazardous air pollutants for epoxy resins production and non-nylon polyamides production.

Table 1 to subpart W - General provisions applicability to subpart W.

Subpart X - National emissions standards for hazardous air pollutants from secondary lead smelting.

Subpart CC - National emissions standards for hazardous air pollutants from petroleum refineries.

Subpart EE - National emissions standards for magnetic tape manufacturing operations.

Subpart GG - National emissions standards for aerospace manufacturing and rework facilities.

Subpart HH - National emissions standards for hazardous air pollutants from oil and natural gas production facilities.

Subpart JJ - National emissions standards for wood furniture manufacturing operations.

Subpart KK - National emissions standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Subpart OO - National emissions standards for tanks - Level 1.

Subpart PP - National emissions standards for containers.

Subpart QQ - National emissions standards for surface impoundments.

Subpart RR - National emissions standards for individual drain systems.

Subpart SS - National emissions standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

Subpart TT - National emissions standards for equipment leaks - Control level 1.

Subpart UU - National emissions standards for equipment leaks - Control level 2 standards.

Subpart VV - National emissions standards for oil-water separators and organic water separators.

Subpart WW - National emissions standards for storage vessels (tanks) - Control level 2.

Subpart YY - National emissions standards for hazardous air pollutants for source categories: generic maximum achievable control technology standards.

Subpart HHH - National emissions standards for hazardous air pollutants from natural gas transmission and storage facilities.

Subpart RRR - National emission standards for hazardous air pollutants for secondary aluminum production.

Table 1 to Subpart RRR - Emission standards for new and existing affected sources.

Table 2 to Subpart RRR - Summary of operating requirements for new and existing affected sources and emission units.

Table 3 to Subpart RRR - Summary of monitoring requirements for new and existing affected sources and emission units.

Appendix A to Subpart RRR - General provisions applicability to subpart RRR.

Subpart UUU - National emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.

Subpart AAAA - National emission standards for hazardous air pollutants: municipal solid waste landfills.

Subpart CCCC - National emission standards for hazardous air pollutants: manufacturing of nutritional yeast.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart VVVV - National emission standards for hazardous air pollutants for boat manufacturing.

Subpart WWWW - National emissions standards for hazardous air pollutants: reinforced plastics composites production.

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

Subpart JJJJJ - National emission standards for hazardous air pollutants for brick and structural clay products manufacturing.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (f_{bio}) in a biological treatment unit.

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

Authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-23

33-15-23-01. Definitions. For purposes of this chapter:

1. "Major source" means any source that has been issued or is required by this article to obtain a title V permit to operate. This includes sources that have begun operation but have not yet applied for a title V permit to operate.

2. "Minor source" has the meaning given to it in section 33-15-14-01.1.

3. "Regulated contaminant" means any "regulated air contaminant", as defined in section 33-15-14-06, except the following:

   a. Carbon monoxide.

   b. Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

   c. Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

History: Effective August 1, 1995; amended effective February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-23-04. Major source permit to operate fees.

1. The owner or operator of each installation that meets the applicability requirements of subsection 2 of section 33-15-14-06 shall pay an annual fee. The fee is determined by the actual annual emissions of regulated contaminants. Fugitive emissions will be included in the fee calculation for sources that are required to count them when determining applicability under section 33-15-14-06.

2. Effective January 1, ~~1995~~ 2005, the annual fee shall be assessed at a rate of twenty-five dollars per ton of emissions of each regulated contaminant identified in section 112(b) of the Federal Clean Air Act. All other regulated contaminants will be assessed a fee at a rate of ~~ten~~ twelve dollars per ton. The minimum fee will be five hundred dollars per source. ~~The maximum fee will be one hundred thousand dollars per source.~~

3. In determining the amount due, that portion of any regulated contaminant which is emitted in excess of four thousand tons [3628.74 metric tons] per year will be exempt from the fee calculation.

4. Each boiler with a heat input greater than two hundred fifty million British thermal units per hour will be assessed fees on an individual basis and independent of the fees associated with the rest of the installation. The four thousand ton [3628.74 metric ~~tons~~ ton] per year cap referenced in subsection 3 is applied to each boiler.

5. Any state-owned facility is exempt from the fee.

6. The fee calculation must be based upon actual annual emissions from the previous calendar year.

7. The fee must be calculated independently for each installation, facility, source, or unit which has been issued a separate permit to operate.

8. The fee rates and the limits established under subsection 2 ~~must~~ may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year.

9. Any source issued a general permit under section 33-15-14-06 is subject to the minor source permit to operate fees under section 33-15-23-03.

10. Any source that qualifies as a "small business" under section 507 of the Federal Clean Air Act may petition the department to reduce or exempt any fee required under this section. Sufficient documentation of the petitioner's financial status must be submitted with the request to allow the department to evaluate the request.

11. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following receipt of such notice.

History: Effective August 1, 1995; amended effective February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-04.2

APRIL 2005

CHAPTER 33-17-01

33-17-01-02. Definitions. For the purpose of this chapter the following definitions shall apply:

1. "Action level" means the concentration of lead or copper in water specified in title 40, Code of Federal Regulations, part 141, subpart I, section 141.80(c), that determines, in some cases, the treatment requirements set forth under title 40, Code of Federal Regulations, part 141, subpart I, that a water system is required to complete.

2. "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, any best available technology must be at least as effective as granular activated carbon.

3. "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

4. "Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

5. "Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle consists of three 3-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; and the third begins January 1, 2011, and ends December 31, 2019.

6. "Compliance period" means a three-year calendar year period within a compliance cycle during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants. Each compliance cycle has three 3-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; and the third from January 1, 1999, to December 31, 2001.

7. "Composite correction program" or "CCP" means a systematic, comprehensive procedure for identifying, prioritizing, and remedying factors that limit water treatment plant performance as set forth in the United States environmental protection agency handbook entitled Optimizing Water Treatment Plant Performance Using The Composite Correction Program, EPA/625/6-91/027, 1998 edition. A composite correction program consists of two phases, a comprehensive performance evaluation and comprehensive technical assistance.

8. "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with title 40, Code of Federal Regulations, part 141, subpart P and subpart T, the comprehensive performance evaluation shall consist of at least the following components:

   a. Assessment of plant performance;

   b. Evaluation of major unit processes;

   c. Identification and prioritization of performance limiting factors;

   d. Assessment of the applicability of comprehensive technical assistance; and

   e. Preparation of a comprehensive performance evaluation report.

9. "Comprehensive technical assistance" or "CTA" means the performance improvement phase of a composite correction program that is implemented if the comprehensive performance evaluation results indicate improved performance potential. During the comprehensive technical assistance phase, identified and prioritized factors that limit water treatment plant performance are systematically addressed and eliminated.

10. "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

11. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

12. "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

13. "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

14. "Cross connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

15. "CT" or "CT calc" means the product of residual disinfectant concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes. If disinfectants are applied, at more than one point prior to the first customer, the CT of each disinfectant sequence must be determined before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the residual disinfectant concentration of each disinfection sequence and the corresponding contact time must be determined before any subsequent disinfection application points. CT ninety-nine point nine is the CT value required for ninety-nine point nine percent (three-logarithm) inactivation of giardia lamblia cysts. CT ninety-nine point nine values for a wide variety of disinfectants and conditions are set forth under title 40, Code of Federal Regulations, part 141, subpart H. CT calculated divided by CT ninety-nine point nine is the inactivation ratio. The total inactivation ratio is determined by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one point zero is assumed to provide a three-logarithm inactivation of giardia lamblia cysts.

16. "Department" means the state department of health.

17. "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane or septum, and while the

water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

18. "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

19. "Disinfectant" means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

20. "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one C is measured, T, for the first measurement of C, is the time in minutes that it takes the water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured. For subsequent measurements of C, T is the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. T within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

21. "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

22. "Disinfection profile" means a summary of daily giardia lamblia inactivation through the treatment plant. The disinfection profile shall be developed as set forth under title 40, Code of Federal Regulations, ~~section 141.172~~ part 141, subpart P (141.172) and subpart T (141.530-141.536).

23. "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

24. "Effective corrosion inhibitor residual", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a concentration sufficient to form a passivating film on the interior walls of pipe.

25. "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

26. "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

27. "Filter profile" means a graphical representation of individual filter performance based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

28. "Filtration" means a process for removing particulate matter from water by passage through porous media.

29. "First draw sample" means a one-liter sample of tap water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(2), that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

30. "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

31. "Granular activated carbon ten" or "GAC10" means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty days.

32. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

33. "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as giardia lamblia or~~, for systems serving ten thousand or more persons,~~ cryptosporidium. Ground water under the direct influence of surface water also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

34. "Haloacetic acids five" or "HAA5" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid, rounded to two significant figures after addition.

35. "Halogen" means one of the chemical elements chlorine, bromine, or iodine.

36. "Initial compliance period" means the first full compliance period that begins January 1, 1993, during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.

37. "Large water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves more than fifty thousand persons.

38. "Lead service line" means a service line made of lead that connects the water main to the building inlet and any pigtail, gooseneck, or other fitting that is connected to a lead line.

39. "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called legionnaires disease.

40. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

41. "Maximum residual disinfectant level" or "MRDL" means a level of a disinfectant added for water treatment that must not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

42. "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of twenty-five degrees Celsius [77 degrees Fahrenheit] or above.

43. "Medium-size water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand <u>three hundred</u> one to fifty thousand persons.

44. "Near the first service connection" means at one of the twenty percent of all service connections in the entire system that are nearest the water supply treatment facility as measured by water transport time within the distribution system.

45. "Noncommunity water system" means a public water system that is not a community water system that primarily provides service to other than year-round residents. A noncommunity water system is either a "nontransient noncommunity" or "transient noncommunity" water system.

46. "Nontransient noncommunity water system" means a noncommunity water system that regularly serves at least twenty-five of the same persons over six months per year.

47. "Optimal corrosion-control treatment", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means the corrosion-control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

48. "Person" means an individual, corporation, company, association, partnership, municipality, or any other entity.

49. "Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

50. "Point-of-entry treatment device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

51. "Point-of-use treatment device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

52. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the physical, chemical, biological, or radiological quality conforming to applicable maximum permissible contaminant levels.

53. "Product" means any chemical or substance added to a public water system, any materials used in the manufacture of public water system components or appurtenances, or any pipe, storage tank, valve, fixture, or other materials that come in contact with water intended for use in a public water system.

54. "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals sixty or more days out of the year. A public water system includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities that are not under control of the operator which are used primarily in connection with the system. A public water system does not include systems that provide water through pipes or constructed conveyances other than pipes that qualify

for the exclusions set forth under section 1401(4)(B)(i) and (ii) of the Federal Safe Drinking Water Act [42 U.S.C. 300f(4)(B)(i) and (ii)]. A public water system is either a "community" or a "noncommunity" water system.

55. "Repeat compliance period" means any subsequent compliance period after the initial compliance period during which public water systems must monitor for inorganic and organic chemicals excluding lead, copper, trihalomethanes, and unregulated contaminants.

56. "Residual disinfectant concentration" (C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.

57. "Sampling schedule" means the frequency required for submitting drinking water samples to a certified laboratory for examination.

58. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

59. "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

60. "Service line sample" means a one-liter sample of water, collected in accordance with title 40, Code of Federal Regulations, part 141, section 141.86(b)(3), that has been standing for at least six hours in a service line.

61. "Single-family structure", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a building constructed as a single-family residence that is currently used either as a residence or a place of business.

62. "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particulate removal by physical and biological mechanisms.

63. "Small water system", for the purpose of title 40, Code of Federal Regulations, part 141, subpart I only, means a water system that serves three thousand three hundred or fewer persons.

64. "Specific ultraviolet absorption" or "SUVA" means specific ultraviolet absorption at two hundred fifty-four nanometers, an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of two hundred fifty-four nanometers in meters to the minus one by its

concentration of dissolved organic carbon, the fraction of the total organic carbon that passes through a zero point four five micrometer pore diameter filter, in milligrams per liter.

65. "Subpart H systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to the requirements of title 40, Code of Federal Regulations, part 141, subpart H.

66. "Supplier of water" means any person who owns or operates a public water system.

67. "Surface water" means all water which is open to the atmosphere and subject to surface runoff.

68. "System with a single service connection" means a system which supplies drinking water to consumers with a single service line.

69. "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred on a forty-seven millimeter membrane filter used for coliform detection.

70. "Total organic carbon" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

71. "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane, and tribromomethane [bromoform]), rounded to two significant figures.

72. "Transient noncommunity water system" means a noncommunity water system that primarily provides service to transients.

73. "Trihalomethane" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

74. "Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.

75. "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

76. "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion

of water from a public water system which is deficient in treatment, as determined by the appropriate local or state agency.

77. "Water system" means all sources of water and their surroundings and includes all structures, conducts, and appurtenances by means of which the water is collected, treated, stored, or delivered.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1991; February 1, 1993; August 1, 1994; August 1, 2000; April 1, 2005.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-02, 61-28.1-03

33-17-01-06. Maximum contaminant levels, action levels, and treatment technique requirements, and maximum residual disinfectant levels.

1. **Inorganic chemicals.** The maximum contaminant levels, action levels, and treatment technique requirements for inorganic chemical contaminants excluding disinfection byproducts ~~are as follows:~~ shall be as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, subpart G.

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	ACTION LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUES REQUIREMENTS
Antimony	0.006		
Arsenic	0.05 (until January 22, 2006) 0.010 (effective January 23, 2006)		
Asbestos	7 million fibers per liter (longer than ten micrometers)		
Barium	2		
Beryllium	0.004		
Cadmium	0.005		
Chromium	0.1		
Copper		The 90th percentile level must be less than or equal to 1.3	Source water and corrosion control treatment
Cyanide (as free cyanide)	0.2		
Fluoride	4.0		
Lead		The 90th percentile level must be less than or equal to 0.015	Source water and corrosion control treatment, public education, and lead service line replacement
Mercury	0.002		
Nickel	0.1		
Nitrate (as N)	10		
Nitrite (as N)	1		
Selenium	0.05		

Thallium	0.002
Total Nitrate and Nitrite (as N)	10

At the discretion of the department, nitrate levels not to exceed twenty milligrams per liter may be allowed in a noncommunity water system if the supplier of water demonstrates to the satisfaction of the department that:

a. Such water will not be available to children under six months of age;

b. There will be continuous posting of the fact that nitrate levels exceed ten milligrams per liter and the potential health effect of exposure;

c. Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter; and

d. No adverse health effects shall result.

2. **Organic chemicals.** The maximum contaminant levels and treatment technique requirements for organic chemical contaminants excluding disinfection byproducts and disinfection byproduct precursors ~~are as follows:~~ shall be as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, subpart G.

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL MILLIGRAM(S) PER LITER	ACTION LEVEL MILLIGRAM(S) PER LITER	TREATMENT TECHNIQUE REQUIREMENTS
Nonvolatile Synthetic Organic Chemicals:			
Acrylamide			The combination (or product) of dose and monomer level may not exceed 0.05 percent dosed at 1 part per million (or equivalent)
Alachlor	0.002		
Atrazine	0.003		
Benzo (a) pyrene	0.0002		
Carbofuran	0.04		
Chlordane	0.002		
Dalapon	0.2		
Dibromochloropropane (DBCP)	0.0002		
Di (2-ethylhexyl) adipate	0.4		
Di (2-ethylhexyl) phthalate	0.006		
Dinoseb	0.007		
Diquat	0.02		
Endothall	0.1		

Endrin	0.002	
Epichlorohydrin		The combination (or product) of dose and monomer level may not exceed 0.01 percent dosed at 20 parts per million (or equivalent)
Ethylene dibromide (EDB)	0.00005	
Glyphosate	0.7	
Heptachlor	0.0004	
Heptachlor epoxide	0.0002	
Hexachlorobenzene	0.001	
Hexachlorocyclopentadiene	0.05	
Lindane	0.0002	
Methoxychlor	0.04	
Oxamyl (Vydate)	0.2	
Polychlorinated biphenyls (PCBs)	0.0005	
Pentachlorophenol	0.001	
Picloram	0.5	
Simazine	0.004	
Toxaphene	0.003	
2,3,7,8-TCDD (Dioxin)	0.00000003	
2,4-D	0.07	
2,4,5-TP Silvex	0.05	
Volatile Synthetic Organic Chemicals:		
Benzene	0.005	
Carbon tetrachloride	0.005	
p-Dichlorobenzene	0.075	
o-Dichlorobenzene	0.6	
1,2-Dichloroethane	0.005	
1,1-Dichloroethylene	0.007	
cis-1,2-Dichloroethylene	0.07	
trans-1,2-Dichloroethylene	0.1	
Dichloromethane	0.005	
1,2-Dichloropropane	0.005	
Ethylbenzene	0.7	
Monochlorobenzene	0.1	
Styrene	0.1	
Tetrachloroethylene	0.005	
Toluene	1	
1,2,4-Trichlorobenzene	0.07	
1,1,1-Trichloroethane	0.2	
1,1,2-Trichloroethane	0.005	
Trichloroethylene	0.005	

Vinyl chloride	0.002
Xylenes (total)	10

3. **Filtration and disinfection treatment.**

   a. General requirements. All subpart H systems that utilize surface water sources shall provide filtration and disinfection treatment. All subpart H systems that utilize ground water sources deemed by the department to be under the direct influence of surface water shall provide disinfection treatment and shall either comply with filtration avoidance criteria or provide filtration treatment.

   b. Treatment technique requirements. The department hereby identifies filtration and disinfection as treatment techniques to protect against the potential adverse health effects of exposure to giardia lamblia, cryptosporidium, legionella, viruses, heterotrophic plate count bacteria, and turbidity. The treatment techniques apply only to subpart H systems. Subpart H systems that serve ten thousand or more persons shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subparts H and P, are met. Subpart H systems that serve fewer than ten thousand persons shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H, are met.

4. **Radioactivity.** The maximum contaminant levels for radioactivity are as follows:

CONTAMINANT	MAXIMUM CONTAMINANT LEVEL (MCL)
Combined radium-226 and radium-228	5 picocuries per liter (pCi/L)
Gross alpha particle activity (including radium-226, but excluding radon and uranium)	15 picocuries per liter (pCi/L)
Uranium	30 micrograms per liter (ug/L)

5. **Microbiological.** The maximum contaminant levels for coliform bacteria are as follows:

   a. Monthly maximum contaminant level violations.

      (1) No more than one sample per month may be total coliform-positive for systems collecting less than forty samples per month.

(2) No more than five point zero percent of the monthly samples may be total coliform-positive for systems collecting forty or more samples per month.

All routine and repeat total coliform samples must be used to determine compliance. Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair are sufficient, and samples invalidated by the department, may not be used to determine compliance.

b. Acute maximum contaminant level violations.

(1) No repeat sample may be fecal coliform or E. coli-positive.

(2) No repeat sample may be total coliform-positive following a fecal coliform or E. coli-positive routine sample.

c. Compliance must be determined each month that a system is required to monitor. The department hereby identifies the following as the best technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant levels for total coliform bacteria: protection of wells from contamination by appropriate placement and construction; maintenance of a disinfection residual throughout the distribution system; proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, cross-connection control programs, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of a positive water pressure in all parts of the distribution system; filtration and disinfection or disinfection of surface water and disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; and the development and implementation of a department-approved wellhead protection program.

6. **Disinfectants.** The maximum residual disinfectant levels for disinfectants are as follows:

DISINFECTANT	MAXIMUM RESIDUAL DISINFECTANT LEVEL IN MILLIGRAMS PER LITER
Chlorine	4.0 as free chlorine
Chloramines	4.0 as combined chlorine
Chlorine dioxide	0.8 as chlorine dioxide

The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels: control

of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

7. **Disinfection byproducts.**

   a. Interim maximum contaminant level for total trihalomethanes. The interim maximum contaminant level for total trihalomethanes is zero point one zero milligrams per liter.

   b. Final maximum contaminant level for total trihalomethanes and maximum contaminant levels for other disinfection byproducts. The final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite are as follows:

DISINFECTION BYPRODUCT	MAXIMUM CONTAMINANT LEVEL IN MILLIGRAMS PER LITER
Total trihalomethanes	0.080
Haloacetic acids five	0.060
Bromate	0.010
Chlorite	1.0

   Systems installing granular activated carbon or membrane technology for compliance purposes may apply to the department for an extension of up to twenty-four months, but not beyond January 1, 2004. In granting an extension, the department shall establish a compliance schedule and may require that the system take interim treatment measures. Failure to meet a schedule or interim treatment requirements established by the department constitutes a violation as set forth under title 40, Code of Federal Regulations, part 141, subpart G.

   The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the final maximum contaminant level for total trihalomethanes and the maximum contaminant levels for haloacetic acids five, bromate, and chlorite: for total trihalomethanes and haloacetic acids five, enhanced coagulation, enhanced softening, or granular activated carbon ten with chlorine as the primary and residual disinfectant; for bromate, control of the ozone treatment process to reduce production of bromate; and for chlorite, control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

8. **Disinfection byproduct precursors.** The department hereby identifies enhanced coagulation and enhanced softening as treatment

techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems. The treatment techniques apply only to subpart H community and nontransient noncommunity water systems that use conventional treatment. Such systems shall be deemed to be in compliance with the treatment techniques if the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart L, are met.

9. **Confirmation sampling.** The department may require confirmation samples and average confirmation sample results with initial sample results to determine compliance. At the discretion of the department, sample results due to obvious monitoring errors may be deleted prior to determining compliance.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; February 1, 1993; August 1, 1994; August 1, 2000; December 1, 2003; April 1, 2005.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-17-01-08. Organic chemical sampling and monitoring requirements.

1. **Volatile and nonvolatile synthetic organic chemicals.**

   a. Coverage. Community and nontransient noncommunity water systems shall conduct monitoring to determine compliance with the maximum contaminant levels for the volatile and nonvolatile synthetic organic chemicals.

   b. Sampling frequency. The number and frequency of samples shall be as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, subpart C.

   c. Compliance. ~~Compliance for each point that is sampled more frequently than annually must be determined based on a running annual average. Compliance for each point that is sampled on an annual or less frequent basis must be determined based on the initial sample result or the average of the initial and confirmation sample results.~~ Compliance for each point that is sampled shall be prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141, subpart C.

2. **Unregulated contaminants.**

   a. Coverage. Community and nontransient noncommunity water systems shall monitor for unregulated organic contaminants.

b. Monitoring requirements. Systems shall monitor for unregulated organic contaminants as set forth under title 40, Code of Federal Regulations, part 141, subpart E.

3. **Monitoring waivers.** With the exception of acrylamide and epichlorohydrin, the department may grant community and nontransient noncommunity water systems waivers from the monitoring requirements for the organic chemicals as set forth under title 40, Code of Federal Regulations, part 141, subpart C. The department may issue waivers only if the conditions set forth under title 40, Code of Federal Regulations, part 142, subpart B, are fully met.

History: Amended effective December 1, 1982; July 1, 1988; December 1, 1990; August 1, 1994; August 1, 2000; April 1, 2005.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-17-01-09. Filtration and disinfection treatment sampling and monitoring requirements.

1. Coverage. All subpart H systems shall conduct monitoring to determine compliance with the treatment technique requirements for filtration and disinfection.

2. Systems utilizing surface water sources. All subpart H systems that utilize surface water sources shall comply with the turbidity and residual disinfectant concentration sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Beginning January 1, 2002, those systems that serve ten thousand or more persons and provide conventional filtration treatment or direct filtration shall also comply with the individual filter sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Those systems serving fewer than ten thousand persons shall also comply with the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart T and the Federal Register volume 69, number 124, Tuesday, June 29, 2004, pages 38850-38857.

3. Systems utilizing ground water sources under the direct influence of surface water. The following sampling and monitoring requirements apply to subpart H systems that utilize ground water sources deemed by the department to be under the direct influence of surface water:

a. All systems that provide filtration treatment shall comply with the turbidity and residual disinfectant concentration sampling and monitoring requirements set forth under title 40, Code of Federal

Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Beginning January 1, 2002, those systems that serve ten thousand or more persons and provide conventional filtration treatment or direct filtration shall also comply with the individual filter sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart P. Those systems serving fewer than ten thousand persons shall also comply with the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart T and the Federal Register volume 69, number 124, Tuesday, June 29, 2004, pages 38850-38857.

b. All systems that do not provide filtration treatment shall comply with the filtration avoidance criteria and applicable disinfection sampling and monitoring requirements set forth under title 40, Code of Federal Regulations, part 141, subpart H. Those systems serving ten thousand or more persons shall also comply with the disinfection profiling and benchmarking requirements and, beginning January 1, 2002, the filtration avoidance criteria set forth under title 40, Code of Federal Regulations, part 141, subpart P. Those systems serving fewer than ten thousand persons shall also comply with the requirements set forth under title 40, Code of Federal Regulations, part 141, subpart T and the Federal Register volume 69, number 124, Tuesday, June 29, 2004, pages 38850-38857.

4. Recycle provisions. All subpart H systems that utilize conventional filtration or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the requirements as prescribed by the department and set forth under title 40, Code of Federal Regulations, part 141.76, subpart H.

History: Amended effective December 1, 1982; July 1, 1988; February 1, 1993; August 1, 2000; December 1, 2003; April 1, 2005.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03

33-17-01-14. Reporting and recordkeeping requirements.

1. **Reporting requirements.** Except when a shorter reporting period is specified, the system shall report to the department the result of any test, measurement, or analysis required within the first ten days following the month in which the results are received or the first ten days following the end of the required monitoring period as stipulated by the department, whichever of these is shorter.

The system shall notify the department within forty-eight hours of the failure to comply with any primary drinking water regulations including failure to comply with monitoring requirements, except that failure to comply with the maximum contaminant levels for total coliform bacteria must be reported to the department no later than the end of the next business day after the system learns of the violation.

Community water systems required to comply with the interim maximum contaminant level for total trihalomethanes shall report the results of all analyses to the department within thirty days of the system's receipt of the results. Subpart H systems shall comply with the reporting requirements for filtration and disinfection treatment set forth under title 40, Code of Federal Regulations, part 141, subparts H ~~and~~, P, and T. Community and nontransient noncommunity water systems shall comply with the reporting requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I. Community, nontransient noncommunity, and transient noncommunity water systems shall comply with the applicable reporting requirements for disinfectants, disinfection byproducts, and disinfection byproduct precursors set forth under title 40, Code of Federal Regulations, part 141, subpart L.

The system is not required to report analytical results to the department in cases when the department performed the analysis.

Within ten days of completing the public notification requirements set forth under title 40, Code of Federal Regulations, part 141, subpart Q for the initial public notice and any repeat notices, public water systems must submit to the department a certification that the system has fully complied with the public notification regulations. The public water system must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to persons served by the system and to the media.

The system shall submit to the department, within the time stated in the request, copies of any records required to be maintained by the department or copies of any documents then in existence which the department is entitled to inspect under the provisions of state law.

2. **Recordkeeping requirements.** Subpart H systems shall comply with the recordkeeping requirements for filtration and disinfection treatment set forth under title 40, Code of Federal Regulations, part 141, subparts H ~~and~~, P, and T. Community and nontransient noncommunity water systems shall comply with the recordkeeping requirements for lead and copper set forth under title 40, Code of Federal Regulations, part 141, subpart I. Community, nontransient noncommunity, and transient noncommunity water systems shall comply with the applicable recordkeeping requirements for disinfectants, disinfection byproducts, and disinfection byproduct precursors set forth under title 40, Code of

Federal Regulations, part 141, subpart L. Community water systems shall retain copies of consumer confidence reports for no less than three years.

All public water systems shall retain on their premises or at a convenient location near their premises, the following additional records to document compliance with the remaining provisions of this chapter:

a. Bacteriological and chemical analyses. Records of bacteriological analyses shall be kept for not less than five years. Records of chemical analyses shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

   (1) The date, place, and time of sampling and the name of the person who collected the sample;

   (2) Identification of the sample as to whether it was a routine distribution system sample, check sample, or raw or other special purpose sample;

   (3) Date of analysis;

   (4) Laboratory and person responsible for performing analysis;

   (5) The analytical technique or method used; and

   (6) The result of the analysis.

b. Corrective actions taken. Records of action taken by the system to correct violations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved.

c. Reports and communications. Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state, or federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

d. Variances and exemptions. Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

e. Public notices and certifications. Copies of public notices issued pursuant to title 40, Code of Federal Regulations, part 141, subpart Q and certifications made to the department pursuant to title 40, Code of Federal Regulations, part 141.31 must be kept for three years after issuance.

History: Amended effective July 1, 1988; December 1, 1990; February 1, 1993; August 1, 2000; December 1, 2003; April 1, 2005.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03, 61-28.1-05

33-17-01-19. Protection of public water systems.

1. **Cross-connection control.**

   a. Cross connections are prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed, tested, and maintained to ensure proper operation on a continuing basis.

   b. A system shall be designed, installed, and maintained in such a manner as to prevent nonpotable liquids, solids, or gases from being introduced into the water through cross connections or any other piping connections to the system.

2. **Interconnections.**

   a. Interconnection between two or more systems shall be permitted only with the written approval of the department.

   b. Interconnection between a nonpublic and public water system shall not be permitted unless specifically approved in writing by the department.

3. **Return of used water prohibited.** Water used for cooling, heating, or other purposes shall not be returned to the system. Such water may be discharged into an approved drainage system through an airgap or may be used for nonpotable purposes.

4. **Products in contact with water.** All products that may come into contact with water intended for use in a public water system must meet American national standards institute/national sanitation foundation international standards 60-1988 and 61-1991. Suppliers of water for public water systems may not willfully introduce or permit the introduction of a product into the public water system which has not first been determined to meet these standards. At the discretion of the department, suppliers of water for public water systems shall compile and maintain on file for inspection by the department a list of all products used by the system. Prior to using a product not on the

list, suppliers of water for public water systems shall either determine that the product meets ~~these~~ appropriate American national standards institute/national sanitation foundation international standards or notify the department of the type, name, and manufacturer of the product. A product will be considered as meeting these standards if so certified by an organization accredited by the American national standards institute to test and certify such products.

5. **Used materials.** Containers, piping, or materials which have been used for any purpose other than conveying potable water shall not be used.

6. **Water storage structures.** Finished water storage structures shall have a watertight cover which excludes the entrance of birds, animals, insects, and excessive dust. Beginning February 16, 1999, public water systems shall not begin construction of uncovered finished water storage facilities.

7. **Turbidity control.** Subpart H systems that ~~serve ten thousand or more persons and~~ provide conventional filtration treatment or direct filtration shall develop individual filter profiles, perform individual filter self-assessments, and arrange for the completion of comprehensive performance evaluations as set forth under title 40, Code of Federal Regulations, ~~subpart~~ subparts P and T. At the direction of the department, systems that are required to conduct a comprehensive performance evaluation shall arrange for the completion of a full composite correction program and implement followup recommendations that result from the composite correction program. Comprehensive performance evaluations and composite correction programs shall be conducted by a party other than the system which is approved by the department.

History: Effective December 1, 1982; amended effective July 1, 1988; August 1, 1994; August 1, 2000; April 1, 2005.
General Authority: NDCC 61-28.1-03
Law Implemented: NDCC 61-28.1-03