

NORTH DAKOTA ADMINISTRATIVE CODE

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**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**

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TITLE 7
AGRICULTURE COMMISSIONER

JULY 2020

**ARTICLE 7-04
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CHAPTER 7-04-04
EMERALD ASH BORER

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7-04-04-01. Definitions.

1. "Ash" means all species of the genus fraxinus.
2. "Certificate" means a document issued or authorized by the commissioner indicating a regulated article is not contaminated with a pest.
3. "Commissioner" means the agriculture commissioner or the designee or the authorized representative of the commissioner.
4. "Compliance agreement" means a written agreement between a person moving regulated articles and the commissioner.
5. "Department" means the North Dakota department of agriculture.
6. "Emerald ash borer" means the insect known as emerald ash borer, agrilus planipennis fairmaire (coleoptera: buprestidae), in any living stage of development.
7. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, or allow to be transported.

8. "Person" means any individual, corporation, limited liability company, company, limited liability partnership, society, or association, or other business entity.
9. "Regulated article" means any article of any character as described in a regulation carrying or capable of carrying the plant pest against which the regulation is directed.
10. "State" means the District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory, or possession of the United States.

History: Effective July 1, 2021.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-04-02. Regulated articles.

Regulated articles are as follows:

1. The emerald ash borer, agrilus planipennis fairmaire, in any stage of development.
2. Firewood of all nonconiferous (hardwood) species.
3. Entire ash trees.
4. Untreated (with bark and sapwood) ash limbs, branches, logs, stumps, and roots capable of harboring emerald ash borer.
5. Ash nursery stock.
6. Ash chips and ash bark chips.
7. Any article, product, or means of conveyance which the commissioner determines to present a risk of spread of emerald ash borer and the commissioner has notified the person in possession of that article, product, or means of conveyance, is subject to this regulation.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-04-03. Regulated areas.

The commissioner shall maintain an updated list or map of regulated areas on the department website.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-04-04. Restrictions on regulated articles and conditions on the movement of regulated articles.

Regulated materials may not be moved from a regulated area to a nonregulated area except under the following conditions:

1. Ash nursery stock movement is prohibited with no exceptions.
2. Other regulated articles must be treated or subjected to special handling under a compliance agreement or permit from the department or state of origin.

3. The regulated article is inspected and found to be apparently free of infestation by an inspector in the state of origin and indicated as such on a phytosanitary certificate or certificate of inspection.
4. The regulated article is treated in a manner approved by the regulatory agency in the state of origin in a way that prevents the regulated article from presenting a risk of spreading emerald ash borer, as indicated on a phytosanitary certificate or compliance agreement.
5. Hardwood firewood shall be labeled to county or parish of origin for partially regulated states.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

7-04-04-05. Violations and penalties.

Any person violating these regulations may be subject to penalties in accordance with North Dakota Century Code section 4.1-23-08.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-08

7-04-04-06. Exceptions.

Exceptions may be made at the discretion of the commissioner.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-23-02

Law Implemented: NDCC 4.1-23-04

**ARTICLE 7-06
NOXIOUS WEEDS**

[Repealed effective July 1, 2020]

Chapter

~~7-06-01~~ — General Provisions

ARTICLE 7-09
MARKETING DIVISION PRIDE OF DAKOTA PROGRAM

Chapter
7-09-01 Pride of Dakota ~~Logo Promotion~~ Program

CHAPTER 7-09-01
PRIDE OF DAKOTA LOGO PROMOTION PROGRAM

Section
7-09-01-01 Purpose
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7-09-01-03 ~~Eligibility for Use of Logo~~ Eligible Applicants
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7-09-01-01. Purpose.

In keeping with the policy of the North Dakota department of agriculture ~~and its marketing division~~ to expand, improve, and develop markets for North Dakota products by promoting their use and sale and pursuant to house concurrent resolution and appropriation by the 1985 legislative assembly, it is the purpose of the pride of Dakota ~~logo promotion program~~ to identify and promote those products which are created, produced, processed, or manufactured in North Dakota.

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13-4.1-01-08~~

7-09-01-02. Definitions.

All terms have the same meaning as in North Dakota Century Code title 4.1 unless otherwise specified.

1. "Business" means any individual, partnership, cooperative association, corporation, business trust, or unincorporated organization or other business with a permanent place of business located completely or in part within the boundaries of North Dakota.
2. ~~"Commissioner" means the commissioner of the North Dakota department of agriculture or his authorized representative or designee.~~
- ~~3. "Commodity council" means any of the agriculture research and promotion councils or commissions created pursuant to the provisions of the North Dakota Century Code, generally in title 4.~~
- ~~4. "Department" means the North Dakota department of agriculture.~~
- ~~5. "Educational institutions" means any North Dakota schools, colleges, universities, or other North Dakota educational institutions.~~

- ~~6-3.~~ "Improper use" means any use of the logo not authorized by the ~~department or the marketing division~~ commissioner or a use of the logo inconsistent with ~~the rules stated in this chapter~~ program policy.
- ~~7-4.~~ "Manufacturer" or "processor" means an individual, partnership, cooperative association, or corporation which processes or manufactures raw materials, agriculture products, or ingredients into food or nonfood products.
- ~~8.~~ ~~"Marketing division" means the state marketing bureau within the department of agriculture designated by North Dakota Century Code section 4-01-19.~~
- ~~9-5.~~ "Nonprofit organization" means any established nonprofit organization in North Dakota as defined by North Dakota Century Code section 10-33.
- ~~10-6.~~ "Pride of Dakota logo", or "logo" means the logo developed for the North Dakota department of agriculture to identify a product which is created, produced, processed, or manufactured in North Dakota.
- ~~11-7.~~ "Producer" means any individual, partnership, family farm, family farm corporation, or cooperative association actually engaged in the production for sale of agriculture products.
- ~~128.~~ "Product" means any product that is created, produced, processed, or manufactured within the state of North Dakota for sale or distribution in its final form.
- ~~13-9.~~ "Trade association" means a North Dakota-based organization of producers, processors, manufacturers, retailers, or wholesalers of products.

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. ~~13-4.1-01-08~~

7-09-01-03. Eligibility for use of logo Eligible applicants.

1. **Producers.** Any North Dakota producer may apply to use the logo on any agriculture product to be used in its original form or on any agriculture product intended to be processed or manufactured, if the agriculture product is produced on a farm or other production unit located completely, or in part, within the boundaries of North Dakota, and if the processed or manufactured agriculture product meets all applicable minimum requirements for the product in North Dakota.
2. **Processors and manufacturers.** Any processor or manufacturer may apply to use the logo on any product, if the product was processed or manufactured in a factory or plant located completely, or in part, within the boundaries of North Dakota, and if the product meets all the applicable minimum requirements of law for processing or manufacturing the product in North Dakota.
3. **Others.** Any business, trade association, educational institution, or commodity ~~council~~ group may apply to use the logo on products created, produced, processed, or manufactured by them.

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. ~~13-4.1-01-08~~

7-09-01-04. Application.

1. Any eligible producer, processor, manufacturer, business, trade association, commodity ~~council~~group, education institutional, or nonprofit organization located completely or in part within North Dakota may apply to use the logo.
2. All applicants must be registered and in good standing with the secretary of state for the state of North Dakota.
3. Application must be made on forms provided by the department and must contain all of the following:
 - a. The name and address of the applicant. The address must indicate the applicant performs substantial functions in North Dakota.
 - b. The location of the producer, processing or manufacturing facility or plant, business, trade association, commodity ~~council~~group, educational institution, or nonprofit organization providing products on which the logo is intended to be used.
 - c. A comprehensive list of all products on which the logo may be used. Application to use the logo with any product not originally listed with the department may be made at any time.
 - ~~d. A market or promotion plan for use of the logo.~~

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13 4.1-01-08

7-09-01-05. Fees.

1. An eligible producer, processor, manufacturer, nonprofit organization, or business will pay an annual fee for the use of the logo at a rate to be determined by the department ~~based on the size and number of employees of the operation of the producer, processor, manufacturer, or business~~. This fee will be no less than fifty dollars and no greater than one thousand dollars.
2. An eligible trade association, commodity council, or educational institution will pay an annual fee for the use of the logo as determined by the department. The minimum annual fee for these organizations will be two hundred fifty dollars.
3. ~~An established North Dakota nonprofit organization will pay an annual fee for the use of the logo as determined by the department. This annual fee will be no less than fifty dollars and no more greater than two hundred fifty dollars.~~

~~4. The income from the fees collected by the department will be used by the marketing division of the department in the development of programs to promote recognition and awareness of the logo among the consuming public.~~

~~5. Application to use the logo with any product not originally listed with the department may be made at any time.~~

- ~~6.4.~~ A voluntary advisory council of seven members will be appointed by the commissioner ~~from trade associations, commodity councils, educational institutions, producers, processors, manufacturers, and businesses to advise the department on the use of logo fees and the development of promotional programs~~ regarding issues related to the pride of Dakota program. Members of the advisory council may not receive any compensation for their services on the

council, but are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13 4.1-01-08

7-09-01-06. Authorization.

1. Authorization from the department to use the logo depends upon approval of an application by the commissioner and extends ~~for one year from the authorization date~~through December thirty-first of that year. Renewal applications are due January first every year.
2. ~~Use of the logo on approved products remains discretionary with the authorized user during the one-year authorization period.~~
- ~~3.~~ Authorized users will receive a certificate of authorization to use the logo, ~~including a registration number~~, which they may display in their place of business. Reproduction proofs of the logo will be furnished to authorized users.
- ~~4.~~3. The ~~marketing division of the~~ department will advise and assist any authorized user of the logo with respect to the size of the logo, its color, its placement on packages, or similar matters, as requested. There may be no alteration in design, color, or makeup of the logo without prior written approval of the commissioner.

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13 4.1-01-08

7-09-01-07. Renewal of authorization.

1. The department shall notify authorized users of the logo of ~~their scheduled~~the January first renewal date ~~sixty days~~six weeks prior to the expiration of their authorization to use the logo.
2. Authorization to use the logo may be renewed if reapplication, including any changes in information provided with the previous application, is made on forms provided by the department and approval is granted by the commissioner.
3. Renewal of authorization may be denied if at the discretion of the commissioner ~~determines that there has been improper use of the logo or if the user fails to reapply for authorization to use the logo within thirty days after the scheduled renewal date.~~

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13 4.1-01-08

7-09-01-08. Promotional use of the logo.

Repealed effective July 1, 2020.

~~The logo may be used for promotional purposes by an authorized producer, processor, or manufacturer on any materials used in a direct national or international marketing effort, by an authorized business, commodity council, trade association, educational institution, or nonprofit organization in any promotion of North Dakota products, or by the department on any stationery, business cards, or other items determined by the commissioner to promote North Dakota products.~~

History: Effective May 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13-

7-09-01-09. Improper use.

Improper use of the logo includes ~~use~~:

1. Use on products not created, produced, processed, or manufactured in whole or in part within the boundaries of North Dakota; ~~allowing~~
2. Allowing the use of the logo by another person who is not an authorized user; ~~using.~~
Authorization to use the logo is nontransferrable;
3. Using the logo without prior approval of the commissioner ~~of agriculture; and any; or~~
4. Any use which the commissioner determines ~~may be detrimental to the promotion of North Dakota products~~ to be ineligible.

History: Effective May 1, 1988; amended effective July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC ~~4-01-19~~; S.L. 1985, Ch. 748; S.L. 1985, Ch. 1, Subdiv. 13-4.1-01-08

CHAPTER 7-12-01 ANHYDROUS AMMONIA STANDARDS

Section

7-12-01-01	Adoption of Standards
7-12-01-02	Definitions
7-12-01-03	Administration and Enforcement
7-12-01-04	General Requirements
7-12-01-05	Specific Requirements for Nonrefrigerated Anhydrous Ammonia Storage Facilities
7-12-01-06	Specific Requirements for Nurse Tanks
7-12-01-07	Documented Training
7-12-01-08	Alternate Procedures for Transferring <u>Requirements for Downloading</u> Anhydrous Ammonia Directly From Cargo Tanks to a Mobile Storage Container Into a Nurse Tanks <u>Tank</u>

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~~" ANSI/CGA G-2.1-2014 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~~ section 5.7.10.
2. The ~~2010~~ 2017 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 ~~2011~~ 2017 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 ~~2010~~ 2016 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 ~~2010~~ 2016 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; April 1, 2013; July 1, 2020.

General Authority: NDCC ~~19-20.2-01~~ 4.1-37-01

Law Implemented: NDCC ~~19-20.2-01~~ 4.1-37-01

7-12-01-02. Definitions.

The following definitions are in addition to those thirty-four definitions listed in "~~ANSI K61.1-1989~~" ANSI/CGA G-2.1-2014, 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 [storage container](#) capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia. [Anhydrous ammonia nurse tank storage lots are not included in this definition.](#)
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.
5. "Existing anhydrous ammonia storage facility" means any permanent anhydrous ammonia storage facility constructed before July 1, 1985.
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.
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.
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.
9. "New anhydrous ammonia storage facility" means any permanent anhydrous ammonia storage facility constructed after July 1, 1985.
10. "Nurse tank" means an implement of husbandry meeting the definition of section 2.2 of the ~~ANSI K61.1~~ [ANSI/CGA G-2.1](#) standard.
11. "Refrigerated storage facility" means an anhydrous ammonia storage facility utilizing tanks for the storage of anhydrous ammonia under refrigerated conditions.
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".
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.
14. "Retail and storage facility" means an anhydrous ammonia storage facility selling or intending to sell anhydrous ammonia to the general public.
15. "Secondhand pressure vessel" means a pressure vessel of which both the location and the ownership have been changed after primary use.
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.
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.
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.

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; [July 1, 2020](#).

General Authority: NDCC ~~19-20.2-01~~[4.1-37-01](#)

Law Implemented: NDCC ~~19-20.2-01~~[4.1-37-01](#)

7-12-01-03. Administration and enforcement.

1. The administration and enforcement of North Dakota Century Code chapter ~~19-20.24.1-37~~ and this chapter is the responsibility of the agriculture commissioner.
2. The agriculture commissioner shall conduct initial and periodic inspection of anhydrous ammonia storage facilities to verify compliance with this chapter and any rules adopted under this chapter.
3. Owners, users, or vendors of new installations made ~~after July 1, 1995~~, will not be issued an operator's license until the completed anhydrous ammonia storage facility site has been inspected by the agriculture commissioner and complies with this chapter and North Dakota Century Code chapter ~~19-20.24.1-37~~.
4. Owners, users, or vendors of anhydrous ammonia must notify the ~~chief boiler inspector~~[agriculture commissioner](#) of storage containers to be used in North Dakota or brought into the state for temporary purposes.
5. Containers found, after inspection, to be defective or otherwise unsafe to operate, or disqualified by legal requirements, must be rejected by the agriculture commissioner, who may order the container immediately depressurized and taken out of service.
6. Defective conditions not posing an immediate hazard, noted during initial and periodic inspections, must be corrected in a timely manner. The time allowed for corrections to take place will be at the discretion of the agriculture commissioner.
7. Operating licenses must be posted in a conspicuous place at the plant or office of the owner, user, or vendor and available for inspection during regular business hours.
8. Anyone spilling one hundred pounds [45.36 kilograms] or more of anhydrous ammonia must report this as soon as possible to the national response center at 1-800-424-8802, to the North Dakota department of emergency services at 701-328-9921, and to the appropriate county emergency manager.
9. The agriculture commissioner may require compliance with any local siting requirements for the issuance or maintenance of an operating license.

History: Effective July 1, 1996; amended effective April 1, 2013; [July 1, 2020](#).

General Authority: NDCC ~~19-20.2-01~~[4.1-37-01](#)

Law Implemented: NDCC ~~19-20.2-01~~[4.1-37-01](#)

7-12-01-04. General requirements.

1. **Frequency of inspection.** Existing anhydrous ammonia storage facilities must be inspected once every five years by the agriculture commissioner. New anhydrous ammonia storage

facilities must be inspected by the agriculture commissioner prior to any license being issued, and at an interval of once every five years thereafter.

2. **Minimum requirements for new storage containers other than refrigerated storage containers.**
 - a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered;
 - c. Metal specified tensile strength not exceeding seventy thousand pounds per square inch [482636 kilopascals];
 - d. Head and shell materials for storage containers made in accordance with fine grain practice;
 - e. All welds postweld heat treated after construction, for all storage containers ~~ordered or installed after January 1, 1996~~. An implement of husbandry does not require postweld heat treatment if the implement is fabricated with hot formed heads or with cold formed heads that have been stress relieved; and
 - f. Storage containers exceeding six thousand water gallons [22712.4 liters] in capacity must be equipped with a manhole opening.
3. **Minimum requirements for secondhand and reinstalled storage containers other than refrigerated storage containers.**
 - a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered or the manufacturer's data report furnished to the chief boiler inspector;
 - c. Metal specified tensile strength not exceeding seventy-five thousand pounds per square inch [517500 kilopascals];
 - d. Heat treated heads or hot formed heads and this indicated on the manufacturer's data report, in lieu of the entire vessel welds being postweld heat treated; and
 - e. All postconstruction repairs and alterations made only by a valid holder of an "R" certificate of authorization from the national board.
4. **Exception for secondhand and reinstalled storage containers.** Metal specified tensile strength may exceed seventy-five thousand pounds per square inch [517500 kilopascals] for secondhand and reinstalled anhydrous ammonia storage containers when the container is relocated within North Dakota and the container has been wet-fluorescent magnetic particle tested by a qualified firm and any stress corrosion cracking found does not extend beyond the minimum required thickness for original maximum allowable working pressure (MAWP). The minimum required thickness must be determined by code calculation, using the original code of construction. If the stress cracking extends beyond the minimum required thickness the container cannot be used for anhydrous ammonia service. In all cases, all stress corrosion cracking must be removed.
5. **Requirements for refrigerated storage containers.** Refrigerated storage containers must be constructed in accordance with section 7 of the ~~1989 ANSI K61.1~~ ANSI/CGA G-2.1 standard. All refrigerated ammonia piping used with refrigerated systems must conform to ASME B31.5, American national standard for refrigerated piping.

6. **Hydrostatic test procedures.** Hydrostatic test procedures must comply with the specific requirements of the national board inspection code and be conducted in a manner approved by the agriculture commissioner. At least one calibrated gauge must be used on the container tested. All air must be vented prior to making the test.
7. **Wet-fluorescent magnetic particle test procedures.** Wet-fluorescent magnetic particle test procedures must comply with SNT-TC-1A procedures and the specific requirements of ASME code, section VIII. The person conducting the test must be certified as a level II technician. This test may be witnessed by the agriculture commissioner, at the agriculture commissioner's discretion.
8. **Welded repairs or alterations, or both, to pressure containers.** Welded repairs or alterations, or both, to pressure containers must only be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
9. **Requirements for welded piping.** Welders making welds to anhydrous ammonia system piping must be certified in accordance with ASME code, section IX, and must furnish a current QW-484 qualification form upon request. The welder must weld only within the range of the welder's qualifications. Defective weld must be rejected by the agriculture commissioner.
10. **Requirements for reinstalled containers and systems.** When a permanent storage container is moved and reinstalled, all fittings and appurtenances must comply with all requirements for new installations.

~~11. **Prohibitions.** In addition to the prohibitions covered by North Dakota Century Code section 19-20.2-08.1, the following are prohibited:~~

- ~~a. Unattended filling of storage containers and nurse tanks;~~
- ~~b. Making repairs or addition of appurtenances directly to pressurized storage containers and nurse tanks;~~
- ~~c. Painting or obscuring of ASME data plates on containers;~~
- ~~d. Painting of hydrostatic, safety and safety relief valves; and~~
- ~~e. Filling nonrefrigerated storage containers and nurse tanks beyond the filling densities permitted by ANSI K61.1, section 5.9.1.~~
- ~~f. Using ASTM A-53 type F piping for anhydrous ammonia piping systems.~~

History: Effective July 1, 1996; amended effective April 1, 1998; April 1, 2013; [July 1, 2020](#).

General Authority: NDCC ~~19-20.2-014.1-37-01~~

Law Implemented: NDCC ~~19-20.2-014.1-37-01~~

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 ~~19-20.2-054.1-37-05~~ and this compliance must be verified by the agriculture commissioner.
 - 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 [at all times](#).

- d. A facility identification sign must be displayed stating the name, [the 911](#) 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 agriculture commissioner 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 agriculture commissioner 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](#) [ANSI/CGA G-2.1](#).
- 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 agriculture commissioner.
- 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](#) [ANSI/CGA G-2.1](#), 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](#) [ANSI/CGA G-2.1](#) 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](#) [ANSI/CGA G-2.1](#). 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 agriculture commissioner.
- 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 pneumatically or hydraulically pressure tested ~~at the working pressure~~ to 1.1 times the design pressure of the system and the integrity of the system proven. A written report of the testing must be retained for a minimum of five years and be furnished to the agriculture commissioner upon request. Underground piping shall be evaluated at a minimum of every five years to ensure leak tightness. To perform the leak test, the underground piping must be isolated and pressurized to two hundred pounds per square inch. The test pressure of two hundred pounds per square inch must be maintained for a minimum of ten minutes. A report of the leak test must be retained for at least five years and furnished to the agriculture commissioner upon request. All tests must be performed with a calibrated gauge.
- 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/or~~ breakaways or both 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 and must comply with all provisions of ANSI/CGA G-2.1 except provision 5.7.10.
- 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 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, bleeder~~Bleeder valves must be installed at truck unloading stations to relieve pressure prior to connecting or disconnecting the truck transfer hoses. The bleeder 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, or two approved self-contained breathing apparatuses suitable for ammonia~~A minimum of two emergency escape-only respirators shall be provided at a prominent and marked location at the storage facility. The escape-only respirator and training must be in compliance with title 29 Code of Federal Regulations part 1910.134 section 12;
 - (2) One pair of protective gloves impervious to ammonia for each of the maximum number of employees that may be storing, handling, transferring, or otherwise working with anhydrous ammonia at the same time, plus one spare pair;
 - (3) Chemical splash goggles ~~that are ANSI Z87.1-1989 rated~~or chemical splash goggles with full-face shield to be worn over the goggles for each of the maximum number of employees that may be storing, handling, transferring, or otherwise working with anhydrous ammonia at the same time, plus at least one spare pair;
 - (4) One pair of protective boots impervious to ammonia;

- (5) One "slicker suit" impervious to ammonia;
 - (6) Safety shower or open top container holding at least one hundred fifty gallons [567.8 liters] of clean water; and
 - (7) One class C fire extinguisher or class C-compatible fire extinguisher.
- 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; April 1, 2013; July 1, 2020.

General Authority: NDCC ~~19-20.2-014.1-37-01~~

Law Implemented: NDCC ~~19-20.2-014.1-37-01~~

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

1. The ASME manufacturer's data report must be provided, if requested by the agriculture commissioner, 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.
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. Tanks must be painted white or aluminum.
6. Container markings and decals must meet the requirements of ~~ANSI K61.1~~ ANSI/CGA G-2.1-2014:
 - 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.
 - e. A legible decal depicting first-aid procedures to follow if injured by ammonia.
7. The container must be numbered and identified with the name and contact information of the owner.
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 agriculture commissioner.
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, 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~~the frame of the wagon.
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, and a tread of at least two-thirty-secondths of an inch.
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; April 1, 2013; July 1, 2020.

General Authority: NDCC ~~19-20.2-014.1-37-01~~

Law Implemented: NDCC ~~19-20.2-014.1-37-01~~

7-12-01-08. ~~Alternate procedures for transferring~~Requirements for downloading anhydrous ammonia ~~directly from cargo tanks to a mobile storage container into a nurse tank~~ tank.

1. Cargo tanks used as mobile storage containers 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~~ANSI/CGA G-2.1-2014:
 - 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~~ANSI/CGA G-2.1-2014:
 - 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 at least thirty days prior to the proposed date of transfer, or 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.~~
- ~~8.~~ Designated downloading sites must be approved by local jurisdictions prior to licensing. Any additional siting or emergency response requirements of the local jurisdiction (county and township) must be complied with fully.

8. Systems mounted on trucks, semitrailers, and trailers for transportation of ammonia must follow the requirements of CGA G-2.1-2014 as well as all United States department of transportation requirements and must be connected to a mode of transportation while in use.

9. Mobile storage containers may not be used for permanent anhydrous ammonia storage.

History: Effective July 1, 1996; amended effective April 1, 1998; June 1, 2005; April 1, 2013; July 1, 2020.

General Authority: NDCC ~~19-20.2-01~~4.1-37-01

Law Implemented: NDCC ~~19-20.2-01~~4.1-37-01

ARTICLE 7-16
COMMERCIAL FEED

Chapter

<u>7-16-01</u>	<u>Definitions and Terms</u>
<u>7-16-02</u>	<u>Label Format</u>
<u>7-16-03</u>	<u>Label Information</u>
<u>7-16-04</u>	<u>Required Guarantees by Animal Class</u>
<u>7-16-05</u>	<u>Expression of Guarantees</u>
<u>7-16-06</u>	<u>Substantiation of Nutritional Suitability</u>
<u>7-16-07</u>	<u>Ingredients</u>
<u>7-16-08</u>	<u>Directions for Use and Precautionary Statements</u>
<u>7-16-09</u>	<u>Nonprotein Nitrogen</u>
<u>7-16-10</u>	<u>Drugs and Additives in Feed</u>
<u>7-16-11</u>	<u>Adulterants</u>

CHAPTER 7-16-01
DEFINITIONS AND TERMS

Section

<u>7-16-01-01</u>	<u>Definitions and Terms</u>
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7-16-01-01. Definitions and terms.

1. The names and definitions for commercial feeds are the official definition of feed ingredients adopted by the association of American feed control officials except as otherwise designated by the agriculture commissioner in specific cases.
2. The terms used in reference to commercial feeds are the official feed terms adopted by association of American feed control officials except as otherwise designated by the agriculture commissioner in specific cases.
3. The following commodities are exempt from the definition of commercial feed: raw meat, raw poultry, hay, loose straw, stover, silages, cobs, husks, and hulls or grain screenings when unground and when not mixed or intermixed with other materials provided that these commodities are not adulterated within the meaning of North Dakota Century Code section 4.1-41-11.
4. Principal display panel means the out-facing side of the feed tag. If there is no tag, principal display panel means the label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-01

CHAPTER 7-16-02
LABEL FORMAT

Section
7-16-02-01 Label Format

7-16-02-01. Label format.

Label information as required in North Dakota Century Code section 4.1-41-06 is to be placed as follows:

1. The information required in subsections 1 and 2 of North Dakota Century Code section 4.1-41-06 and a purpose statement must appear in its entirety on the principal display panel.
2. The information required in subsections 3, 4, 5, 6, and 7 of North Dakota Century Code section 4.1-41-06 must be displayed in a prominent place on the feed tag or label, but not necessarily on the principal display panel. When a precautionary statement is required but does not appear on the principal display panel, it must be referenced on the principal display panel with a statement such as "see back of label for precautions".
3. The information required to appear on the label may not be subordinated or obscured by other statements or designs.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-03 LABEL INFORMATION

Section

7-16-03-01 Label Information

7-16-03-01. Label information.

Commercial feed, other than customer-formula feed, must be labeled with the information prescribed by North Dakota Century Code section 4.1-41-06.

1. Product name and brand name if any:

- a. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform to that use. A commercial feed for a particular animal class must be suitable for that purpose.
- b. Commercial, registered brand, or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.
- c. The name of a commercial feed may not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and may not be one representing any components of a mixture unless all components are included in the name provided that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.
- d. The word "protein" is not be permitted in the product name of a feed that contains added nonprotein nitrogen.
- e. When the name carries a percentage value, it must be understood to signify protein content or protein equivalent content, or both even though it may not explicitly modify the percentage with the word "protein" provided that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers may not be used in such a manner as to be misleading or confusing to the customer.
- f. Single ingredient feeds must have a product name in accordance with the designated definition of feed ingredients as recognized by the association of American feed control officials unless the agriculture commissioner designates otherwise.
- g. The word "vitamin", or a contraction of vitamin, or any word suggesting vitamin may be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared as specified in this rule.
- h. The term "mineralized" shall not be used in the name of a feed except for "trace mineralized salt". When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

i. The term "meat" and "meat byproducts" must be qualified to designate the animal from which the meat and meat byproducts are derived unless the meat and meat byproducts are made from cattle, swine, sheep, and goats.

2. If a drug is used:

a. The word "medicated" must appear directly following and below the product name in type size, no smaller than one-half the type size of the product name;

b. Purpose statement as required in this section;

c. The purpose of the medication; and

d. An active ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with these rules.

3. Purpose statement:

a. The statement of purpose shall contain the specific species and animal class for which the feed is intended as defined in these rules.

b. The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species, and purpose while being consistent with the category of animal class defined in these rules which may include weight range, sex, or age of animal for which the feed is manufactured.

c. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class for which the product is intended.

d. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "for further manufacture of feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species, feeds, and premix specifications are provided by the end user of the premix.

e. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products, or molasses products may exclude the animal class and species and state "for further manufacture of feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

f. The purpose statement of a product must include a statement of enzyme functionality if enzymatic activity is represented in any manner.

g. The statement of purpose for single ingredient feeds must be stated as "single ingredient feed" or "feed ingredient". The manufacturer of a single ingredient feed or feed ingredient shall have the flexibility in describing in more specific and common language the intended use of the feed ingredient dependent on species and class.

4. Guarantees must be stated in the following sequence: crude protein, equivalent crude protein from nonprotein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, neutral detergent fiber, calcium, phosphorus, salt, and sodium.

5. Other required and voluntary guarantees must follow a general format such that the units of measure used to express guarantees are listed in a sequence that provides a consistent grouping of the units of measure.

6. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of North Dakota Century Code section 4.1-41-06.

- a. The name of each ingredient as defined in the official publication of the association of American feed control officials, common or usual name, or one approved by the agriculture commissioner.
- b. Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the official publication of the association of American feed control officials in lieu of the individual ingredients, provide that:
 - (1) When a collective term for a group of ingredients is used on the label, individual ingredients within that group must not be listed on the label.
 - (2) The manufacturer shall provide the feed control official with a list of individual ingredients within a defined group that are or have been used at manufacturing facilities distributing in or into the state upon request.
- 7. Directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by this rule appear elsewhere on the label.
- 8. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address must include the street address, city, state, and zip code. The street address may be omitted if it is shown in the current city directory or telephone directory.
- 9. Quantity statement:
 - a. Net quantity must be declared in terms of weight, liquid measure, or count based on applicable requirements under section 4 of the Fair Packaging and Labeling Act.
 - b. Net quantity labeled in terms of weight must be expressed both in pounds, with any remainder in terms of ounces or common decimal fractions of the pound and in appropriate metric system units. In the case of liquid measure, both in the largest whole unit with any remainder in terms of fluid ounces, or common decimal fractions of the pint or quart and in appropriate metric system units.
 - c. When the declaration of quantity of contents by count does not give adequate information as to the quantity of feed in the container, it must be combined with such statement of weight, liquid measure, or size of the individual units as will provide such information.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-04
REQUIRED GUARANTEES BY ANIMAL CLASS

Section
7-16-04-01 Required Guarantees by Animal Class

7-16-04-01. Required guarantees by animal class.

1. Required guarantees for swine formula feeds.

a. Animal classes.

- (1) Prestarter - Two to eleven pounds [0.91 to 4.99 kilograms].
- (2) Starter - Eleven to forty-four pounds [4.99 to 19.96 kilograms].
- (3) Grower - Forty-four to one hundred ten pounds [19.96 to 49.90 kilograms].
- (4) Finisher - One hundred ten pounds [49.90 kilograms] to market weight.
- (5) Gilts, sows, and adult boars.
- (6) Lactating gilts and sows.

b. Guaranteed analysis for all animal classes for swine complete feeds and supplements.

- (1) Minimum percentage of crude protein.
- (2) Minimum percentage of lysine.
- (3) Minimum percentage of crude fat.
- (4) Maximum percentage of crude fiber.
- (5) Minimum and maximum percentage of calcium.
- (6) Minimum percentage of phosphorus.
- (7) Minimum and maximum percentage of salt, if added.
- (8) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.
- (9) Minimum selenium in parts per million.

2. Required guarantees for formula poultry feeds for broilers, layers, and turkeys.

a. Animal classes.

- (1) Layer - Chickens that are grown to produce eggs for food.
 - (a) Starting or growing - From day of hatch to approximately ten weeks of age.
 - (b) Finisher - From approximately ten weeks of age to the time the first egg is produced, approximately twenty weeks of age.
 - (c) Laying - From the time the first egg is laid throughout the time of egg production.

(d) Breeders - Chickens that produce fertile eggs for hatching replacement layers to produce eggs for food from the time the first egg is laid throughout their productive cycle.

(2) Broiler - Chickens that are grown for human food.

(a) Starting or growing - From day of hatch to approximately five weeks of age.

(b) Finisher - From approximately five weeks of age to market, forty-two to fifty-two days.

(c) Breeders - Hybrid strains of chickens of any age and either sex, whose offspring are grown for human food.

(3) Broilers, breeders - Chickens whose offspring are grown for human food.

(a) Starting or growing - From day of hatch until approximately ten weeks of age.

(b) Finishing - From approximately ten weeks of age to time the first egg is produced, approximately twenty weeks of age.

(c) Laying - Fertile, egg-producing chickens from the day of first egg throughout the time fertile eggs are produced.

(4) Turkeys.

(a) Starting or growing - Turkeys that are grown for human food from day of hatch to approximately thirteen weeks of age for hens and sixteen weeks of age for toms.

(b) Finisher - Turkeys that are grown for human food, hens from approximately thirteen weeks of age to approximately seventeen weeks of age; males from sixteen weeks of age to twenty weeks of age; or desired market weight.

(c) Laying - Female turkeys that are producing eggs, from the time the first egg is produced throughout the time of egg production.

(d) Breeder - Turkeys of both sexes that are grown to produce fertile eggs, from day of hatch to the time the first egg is produced, approximately thirty weeks of age.

b. Guaranteed analysis for all animal classes for poultry complete feeds and supplements.

(1) Minimum percentage of crude protein.

(2) Minimum percentage of lysine.

(3) Minimum percentage of methionine.

(4) Minimum percentage of crude fat.

(5) Maximum percentage of crude fiber.

(6) Minimum and maximum percentage of calcium.

(7) Minimum percentage of phosphorus.

(8) Minimum and maximum percentage of salt, if added.

(9) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.

3. Required guarantees for beef cattle formula feeds.

a. Animal classes.

(1) Calves from birth to weaning.

(2) Cattle on pasture may be specific as to production stage; for example, stocker, feeder, replacement heifers, brood cows, bulls, etc.

(3) Feedlot cattle.

b. Guaranteed analysis for all animal classes for beef complete feeds and supplements.

(1) Minimum percentage of crude protein.

(2) Maximum percentage of equivalent crude protein from nonprotein nitrogen when added.

(3) Minimum percentage of crude fat.

(4) Maximum percentage of crude fiber.

(5) Minimum and maximum percentage of calcium.

(6) Minimum percentage of phosphorus.

(7) Minimum and maximum percentage of salt, if added.

(8) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.

(9) Minimum percentage of potassium.

(10) Minimum vitamin A, other than precursors of vitamin A, in international units per pound, if added.

c. Guaranteed analysis for beef mineral feeds, if added.

(1) Minimum and maximum percentage of calcium.

(2) Minimum percentage of phosphorus.

(3) Minimum and maximum percentage of salt.

(4) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.

(5) Minimum percentage of magnesium.

(6) Minimum percentage of potassium.

(7) Minimum copper in parts per million.

(8) Minimum selenium in parts per million.

(9) Minimum zinc in parts per million.

(10) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

4. Required guarantees for dairy formula feeds.

a. Animal classes.

(1) Veal milk replacer.

(2) Herd milk replacer.

(3) Starter.

(4) Nonlactating dairy cattle.

(a) Replacement dairy heifers;

(b) Dairy bulls; and

(c) Dairy calves.

(5) Lactating dairy cows.

(6) Dry dairy cows.

b. Guaranteed analysis for veal and heard replacement milk replacer.

(1) Minimum percentage of crude protein.

(2) Minimum percentage of crude fat.

(3) Maximum percentage of crude fiber.

(4) Minimum and maximum of percentage calcium.

(5) Minimum percentage of phosphorus.

(6) Minimum vitamin A, other than precursors of vitamin A, in international units per pound, if added.

c. Guaranteed analysis for dairy cattle complete feeds and supplements.

(1) Minimum percentage of crude protein.

(2) Maximum percentage of equivalent crude protein from nonprotein nitrogen when added.

(3) Minimum percentage of crude fat.

(4) Maximum percentage of crude fiber.

(5) Maximum percentage of acid detergent fiber.

(6) Minimum and maximum percentage of calcium.

(7) Minimum percentage of phosphorus.

(8) Minimum selenium in parts per million.

(9) Minimum vitamin A, other than precursors of vitamin A, in international units per pound, if added.

d. Required guaranteed analysis for dairy mixing and pasture mineral, if added.

(1) Minimum and maximum percentage of calcium.

(2) Minimum percentage of phosphorus.

(3) Minimum and maximum percentage of salt.

(4) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.

(5) Minimum percentage of magnesium.

(6) Minimum percentage of potassium.

(7) Minimum selenium in parts per million.

(8) Minimum vitamin A, other than the precursors of vitamin A, in international units per pound.

5. Required guarantees for equine formula feeds.

a. Animal classes.

(1) Growing.

(2) Broodmare.

(3) Maintenance.

(4) Performance, including stallions.

b. Guaranteed analysis for all animal classes for equine complete feeds and supplements.

(1) Minimum percentage of crude protein.

(2) Minimum percentage of crude fat.

(3) Maximum percentage of crude fiber.

(4) Maximum percentage of acid detergent fiber.

(5) Maximum percentage of neutral detergent fiber.

(6) Minimum and maximum percentage of calcium.

(7) Minimum percentage of phosphorus.

(8) Minimum copper in parts per million, if added.

(9) Minimum selenium in parts per million.

(10) Minimum zinc in parts per million.

(11) Minimum vitamin A, other than the precursors of vitamin A, in international units, if added.

c. Guaranteed analysis for all animal classes for equine mineral feeds.

- (1) Minimum and maximum percentage of calcium.
- (2) Minimum percentage of phosphorus.
- (3) Minimum and maximum percentage of salt, if added.
- (4) Minimum and maximum percentage of sodium.
- (5) Minimum copper in parts per million, if added.
- (6) Minimum selenium in parts per million.
- (7) Minimum zinc in parts per million.
- (8) Minimum vitamin A, other than precursors of vitamin A, in international units per pound, if added.

6. Required guarantees for goat formula feeds.

a. Animal classes.

- (1) Starter.
- (2) Grower.
- (3) Finisher.
- (4) Breeder.
- (5) Lactating.

b. Guaranteed analysis for all animal classes for goat complete feeds and supplements.

- (1) Minimum percentage of crude protein.
- (2) Maximum percentage of equivalent crude protein from nonprotein nitrogen when added.
- (3) Minimum percentage of crude fat.
- (4) Maximum percentage of crude fiber.
- (5) Minimum and maximum percentage of acid detergent fiber.
- (6) Minimum and maximum percentage of calcium.
- (7) Minimum percentage of phosphorus.
- (8) Minimum and maximum percentage of salt, if added.
- (9) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.
- (10) Minimum and maximum copper in parts per million, if added.
- (11) Minimum selenium in parts per million.

(12) Minimum vitamin A, other than precursors of vitamin A, in international units, if added.

7. Required guarantees for sheep formula feeds.

a. Animal classes:

(1) Starter.

(2) Grower.

(3) Finisher.

(4) Breeder.

(5) Lactating.

b. Guaranteed analysis for all animal classes for sheep complete feeds and supplements:

(1) Minimum percentage of crude protein.

(2) Maximum percentage of equivalent crude protein from nonprotein nitrogen when added.

(3) Minimum percentage of crude fat.

(4) Maximum percentage of crude fiber.

(5) Minimum and maximum percentage of calcium.

(6) Minimum percentage of phosphorus.

(7) Minimum and maximum percentage of salt, if added.

(8) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.

(9) Minimum and maximum copper in parts per million, if added or if total copper exceeds twenty parts per million.

(10) Minimum selenium in parts per million.

(11) Minimum vitamin A, other than precursors of vitamin A, in international units per pound, if added.

8. Required guarantees for duck and geese formula feeds.

a. Animal classes:

(1) Ducks:

(a) Starter - Zero to three weeks of age.

(b) Grower - Three to six weeks of age.

(c) Finisher - Six weeks to market.

(d) Breeder developer - Eight to nineteen weeks of age.

(e) Breeder - Twenty-two weeks to end of lay.

(2) Geese:

(a) Starter - Zero to four weeks of age.

(b) Grower - Four to eight weeks of age.

(c) Finisher - Eight weeks to market.

(d) Breeder developer - Ten to twenty-two weeks of age.

(e) Breeder - Twenty-two weeks to end of lay.

b. Guaranteed analysis for all classes for duck and geese complete feeds and supplements:

(1) Minimum percentage of crude protein.

(2) Minimum percentage of crude fat.

(3) Maximum percentage of crude fiber.

(4) Minimum and maximum percentage of calcium.

(5) Minimum percentage of phosphorus.

(6) Minimum and maximum percentage of salt if added.

(7) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.

9. Required guarantees for fish complete feeds and supplements.

a. Animal species shall be declared in lieu of animal class:

(1) Trout.

(2) Catfish.

(3) Species other than trout or catfish.

b. Guaranteed analysis for fish complete feeds and supplements:

(1) Minimum percentage of crude protein;

(2) Minimum percentage of crude fat;

(3) Maximum percentage of crude fiber; and

(4) Minimum percentage of phosphorus.

10. Required guarantees for rabbit complete feeds and supplements.

a. Animal classes:

(1) Grower - Four to twelve weeks of age.

(2) Breeder - Twelve weeks of age and over.

b. Guaranteed analysis for all classes for rabbit complete feeds and supplements:

- (1) Minimum percentage of crude protein.
- (2) Minimum percentage of crude fat.
- (3) Minimum and maximum percentage of crude fiber, maximum crude fiber may not exceed the minimum by more than five units.
- (4) Minimum and maximum percentage of calcium.
- (5) Minimum percentage of phosphorus.
- (6) Minimum and maximum percentage of salt, if added.
- (7) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.
- (8) Minimum vitamin A, other than precursors of vitamin A, in international units per pound, if added.

11. The required guarantees of grain mixtures with or without molasses and feeds other than those described in this rule must include the following items in the order listed:

a. Animal class and species for which the product is intended.

b. Guaranteed analysis:

- (1) Minimum percentage crude protein.
- (2) Maximum or minimum percentage of equivalent crude protein from nonprotein nitrogen.
- (3) Minimum percentage of crude fat.
- (4) Maximum percentage of crude fiber.
- (5) Minerals in formula feeds in the following order:
 - (a) Minimum and maximum percentages of calcium.
 - (b) Minimum percentage of phosphorus.
 - (c) Minimum and maximum percentage of salt if added.
 - (d) Minimum and maximum percentage of total sodium must be guaranteed only when total sodium exceeds the maximum salt guarantee.
 - (e) Other minerals.
- (6) Minerals in feed ingredients as specified by the official definitions of the association of American feed control officials.
- (7) Vitamins in such terms as specified in this rule.
- (8) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.
- (9) Viable lactic acid producing microorganisms for use in silages in terms specified in this rule.

(10) A commercial feed intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state the intended purpose and guarantee the relevant nutrients.

12. Exemptions.

a. A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal, and herd milk replacers is not required when:

(1) The feed or feed ingredient is not intended or represented or does not serve as a principal source of that mineral to the animal.

(2) The feed or feed ingredient is intended for nonfood-producing animals and contains less than six and one-half percent total mineral.

b. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

c. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

d. Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made.

e. The indication for animal class and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class or species.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-05
EXPRESSION OF GUARANTEES

Section
7-16-05-01 Expression of Guarantees

7-16-05-01. Expression of guarantees.

1. The guarantees for crude protein, equivalent crude protein from nonprotein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber, and other fiber indicators shall be in terms of percentage.

2. Mineral guarantees.

a. When the calcium, salt, and sodium guarantees are given in the guaranteed analysis, such must be stated and conform to the following:

(1) When the minimum is below two and one-half percent, the maximum may not exceed the minimum by more than one-half percentage point.

(2) When the minimum is two and one-half percent, but less than five percent, the maximum may not exceed the minimum by more than one percentage point.

(3) When the minimum is above five percent or greater, the maximum may not exceed the minimum by more than twenty percent of the minimum and in no case may the maximum exceed the minimum by more than five percentage points.

b. When stated, guarantees for minimum and maximum total sodium and salt, minimum potassium, magnesium, sulfur, phosphorus, and maximum fluorine must be in terms of percentage. Other mineral guarantees must be stated in parts per million when the concentration is less than ten thousand parts per million and in percentage when the concentration is ten thousand parts per million or greater.

c. Products labeled with a quantity statement may state mineral guarantees in milligrams per unit consistent with the quantity statement and directions for use.

3. Guarantees for minimum vitamin content of commercial feeds must be listed in the order specified and are stated in milligrams per pound or in units consistent with those used for the quantity statement unless otherwise specified.

a. Vitamin A, other than precursors of vitamin A, in international units per pound.

b. Vitamin D-3 in products offered for poultry feeding, in international chick units per pound.

c. Vitamin D for other uses, international units per pound.

d. Vitamin E, in international units per pound.

e. Concentrated oils and feed additive premixes containing vitamins A, D, E, or any combination thereof may, at the option of the distributor be stated in units per gram instead of units per pound.

f. Vitamin B-12, in milligrams or micrograms per pound.

g. All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavin; d-pantothenic acid; thiamine; niacin; vitamin

B-6; folic acid; choline; biotine; inositol; p-amino benzoic acid; ascorbic acid; and carotene.

4. Guarantees for drugs must be stated in terms of percent by weight, except:

- a. Antibiotics present at less than two thousand grams per ton, total, of commercial feed must be stated in grams per ton of commercial feed.
- b. Antibiotics present at two thousand or more grams per ton, total, of commercial feed must be stated in grams per pound of commercial feed.
- c. Labels for commercial feeds containing either growth promotion, or feed efficiency levels of nonmedically important antibiotics, or both, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the federal food additive regulations for certain antibiotics, where quantitative guarantees are required regardless of the level or purpose of the antibiotic.
- d. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

5. Commercial feeds containing any added nonprotein nitrogen must be labeled as follows:

a. For ruminants:

- (1) Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than five percent protein from natural sources must be guaranteed as follows: crude protein, minimum, (insert percent). This includes not more than (insert percent) equivalent crude protein from nonprotein nitrogen.
- (2) Mixed feed concentrates and supplements containing less than five percent protein from natural sources may be guaranteed as follows: equivalent crude protein from nonprotein nitrogen, minimum (insert percent).
- (3) Ingredient sources of nonprotein nitrogen such as urea, diammonium phosphate, ammonium phosphate solution, ammoniated rice hulls, or other basic nonprotein nitrogen ingredients defined by the association of American feed control officials must be guaranteed as follows: nitrogen, minimum (insert percent), equivalent crude protein from nonprotein nitrogen, minimum (insert percent).

b. For nonruminants:

- (1) Complete feeds, supplements, and concentrates containing crude protein from all forms of nonprotein nitrogen, added as such, must be labeled as follows: crude protein, minimum (insert percent). This includes not more than (insert percent) equivalent crude protein that is not nutritionally available to (species of animal for which the feed is intended).
- (2) Premixes, concentrates, or supplements intended for nonruminants containing more than one and one-quarter percent equivalent crude protein from all forms of nonprotein nitrogen, added as such, must contain adequate directions for use and a prominent statement:

WARNING: This feed must be used only in accordance with directions furnished on the label.

6. Mineral phosphatic materials for feeding purposes must be labeled with the guarantee for minimum and maximum percentage of calcium when present, the minimum percentage of phosphorus, and the maximum percentage of fluorine.
7. Guarantees for microorganisms shall be stated in colony forming units per gram when directions are for using the product in grams, or in colony forming units per pound when directions are for using the product in pounds. A parenthetical statement following the guarantee must list each species in order of predominance.
8. Guarantees for enzymes must be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity must be specified, such as: "protease (Bacillus subtilis) 5.5 mg amino acids liberated/min./milligram." If two or more sources have the same type of activity, they must be listed in order of predominance based on the amount of enzymatic activity provided.
9. Guarantees for dietary starch, sugars, and fructans for commercial feeds, other than customer-formula feed, pet food, and specialty pet food products:
 - a. A commercial feed that bears on its labeling a claim in any manner for levels of "dietary starch", "sugars", "fructans", or words of similar designation, must include on the label:
 - (1) Guarantees for maximum percentage of dietary starch and maximum percentage sugars, in the guaranteed analysis section immediately following the last fiber guarantee.
 - (2) A maximum percentage guarantee for fructans immediately following sugars, if the feed contains forage products.
 - b. When such guarantees for dietary starch, sugars, or fructans for commercial feeds appear on the label, feeding directions must indicate the proper use of the feed product and a recommendation to consult with a veterinarian or nutritionist for a recommended diet.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-06
SUBSTANTIATION OF NUTRITIONAL SUITABILITY

Section
7-16-06-01 Substantiation of Nutritional Suitability

7-16-06-01. Substantiation of nutritional suitability.

1. A commercial feed, other than a customer-formula feed, must be nutritionally suitable for its intended purpose as represented by its labeling.
2. If the commissioner has reasonable cause to believe a commercial feed is not nutritionally suitable, the commissioner may request the feed manufacturer to either submit an "affidavit of suitability" or an alternative procedure acceptable to the commissioner, certifying the nutritional adequacy of the feed. The affidavit of suitability or alternative procedure of suitability serves as substantiation of the suitability of the feed.
3. If an affidavit of suitability, or alternative procedure acceptable to the commissioner is not submitted by the feed manufacturer within thirty days of written notification, the commissioner may deem the feed adulterated under this rule and order the feed removed from the marketplace.
4. The affidavit of suitability must contain the following information:
 - a. The feed company's name;
 - b. The product name of the feed;
 - c. The name and title of the affiant submitting the document;
 - d. A statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose;
 - e. The date of submission; and
 - f. The signature of the affiant notarized by a certified notary public.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-07 **INGREDIENTS**

Section

7-16-07-01 Ingredients

7-16-07-01. Ingredients.

1. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, must be the name as defined in the official definitions of feed ingredients as published in the official publication of the association of American feed control officials, the common or usual name, or one approved by the agriculture commissioner.
2. The name of each ingredient must be shown in letters or type of the same size.
3. No reference to quality or grade of an ingredient must appear in the ingredient statement of a feed.
4. The term "dehydrated" may precede the name of any product that has been artificially dried.
5. A single ingredient product defined by the association of American feed control officials is not required to have an ingredient statement.
6. Tentative definitions for ingredients may not be used until adopted as official unless no official definition exists or the ingredient has a common accepted name that requires no definition.
7. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient must contain not less than seven thousandths of one percent iodine, uniformly distributed.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-08
DIRECTIONS FOR USE AND PRECAUTIONARY STATEMENTS

Section

7-16-08-01 Directions for Use and Precautionary Statements

7-16-08-01. Directions for use and precautionary statements.

1. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives, including drugs, special purpose additives must:
 - a. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and
 - b. Include all information described by all applicable regulations under the Federal Food, Drug, and Cosmetic Act.
2. Adequate directions for use and precautionary statements are required for feeds containing nonprotein nitrogen as specified in these rules.
3. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-09
NONPROTEIN NITROGEN

Section

7-16-09-01 Nonprotein Nitrogen

7-16-09-01. Nonprotein nitrogen.

Urea and other nonprotein nitrogen products defined in the official publication of the association of American feed control officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than eight and three quarters percent of equivalent crude protein from all forms of nonprotein nitrogen, added as such, or the equivalent crude protein from all forms of nonprotein nitrogen, added as such, exceeds one-third of the total crude protein, the label must bear adequate directions for the safe use of feeds and a precautionary statement: "**CAUTION: USE AS DIRECTED.**"

1. The directions for use and the caution statement must be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.
2. Nonprotein nitrogen defined in the official publication of the association of American feed control officials, when so indicated, are acceptable ingredients in commercial feeds distributed to nonruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from nonprotein nitrogen sources when used in nonruminant rations may not exceed one and one-quarter percent of the total daily ration.
3. On labels such as those for medicated feeds which bear either adequate feeding directions, or warning statements, or both; the presence of added nonprotein nitrogen may not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-10
DRUGS AND ADDITIVES IN FEED

Section

7-16-10-01 Drugs and Additives in Feed

7-16-10-01. Drugs and additives in feed.

1. Prior to approval of either a registration application or approval of a label for commercial feed which contains additives, or both, the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

2. Satisfactory evidence of safety and efficacy of a commercial feed may be:
 - a. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in title 21, Code of Federal Regulations, or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use.

 - b. When the commercial feed is itself a drug as defined in subsection 7 of North Dakota Century Code section 4.1-41-01 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the food and drug administration under section 512 of the Federal Food, Drug, and Cosmetic Act.

 - c. When one of the purposes for feeding a commercial feed is to impart immunity, the constituents imparting immunity have been approved for the purpose through the federal Virus, Serum, and Toxins Act of 1913 as amended.

 - d. When the commercial feed is a direct fed microbial product and:
 - (1) The product meets the particular fermentation product definition;

 - (2) The microbial content statement as expressed in the labeling is limited to the following: "Contains a source of live (viable) naturally occurring microorganisms." This statement shall appear on the label; and

 - (3) The source is stated with a corresponding guarantee expressed in accordance with these rules.

 - e. When the commercial feed is an enzyme product and:
 - (1) The product meets the particular enzyme definition defined by the association of American feed control officials; and

 - (2) The enzyme is stated with a corresponding guaranteed expressed in accordance with these rules.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-06

CHAPTER 7-16-11 ADULTERANTS

Section
7-16-11-01 Adulterants

7-16-11-01. Adulterants.

1. For the purpose of subsection 1 of North Dakota Century Code section 4.1-41-11, the terms "poisonous or harmful substance" include:
 - a. Fluorine and any mineral or mineral mixture that is to be used directly for the feeding of domestic animals and in which the fluorine exceeds:
 - (1) Two tenths of one percent for breeding and dairy cattle;
 - (2) Three tenths of one percent for slaughter cattle;
 - (3) Three tenths of one percent for sheep;
 - (4) Thirty-five hundredths of one percent for lambs;
 - (5) Forty-five hundredths of one percent for swine; and
 - (6) Six tenths of one percent for poultry.
 - b. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration exclusive of roughage above the following amounts:
 - (1) Four thousandths of one percent for breeding and dairy cattle;
 - (2) Nine thousandths of one percent for slaughter cattle;
 - (3) Six thousandths of one percent for sheep;
 - (4) One hundredth of one percent for lambs;
 - (5) Fifteen thousandths of one percent for swine; and
 - (6) Three hundredths of one percent for poultry.
 - c. Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep, or goats consuming roughage with or without limited amounts of grain that results in a daily fluorine intake in excess of fifty milligrams of fluorine per one hundred pounds [45.36 kilograms] of body weight.
 - d. Soybean meal, flakes, or pellets, or other vegetable meals, flakes, or pellets that have been extracted with trichlorethylene or other chlorinated solvents.
 - e. Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients that are considered or reported to be a significant source of vitamin B1.
2. All screenings or byproducts of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product contains not more than four and one-half viable restricted seeds per pound.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20
Law Implemented: NDCC 4.1-41-11

ARTICLE 7-17
PET FOOD AND SPECIALTY PET FOOD

<u>Chapter</u>	
<u>7-17-01</u>	<u>Definitions</u>
<u>7-17-02</u>	<u>Label Format and Labeling</u>
<u>7-17-03</u>	<u>Brand and Product Names</u>
<u>7-17-04</u>	<u>Expression of Guarantees</u>
<u>7-17-05</u>	<u>Ingredients</u>
<u>7-17-06</u>	<u>Drugs and Pet Food Additives</u>
<u>7-17-07</u>	<u>Nutritional Adequacy Feeding</u>
<u>7-17-08</u>	<u>Directives Statements</u>
<u>7-17-09</u>	<u>Calorie Content Descriptive</u>
<u>7-17-10</u>	<u>Terms Manufacturer</u>
<u>7-17-11</u>	<u>Distributor</u>

CHAPTER 7-17-01
DEFINITIONS

<u>Section</u>	
<u>7-17-01-01</u>	<u>Definitions</u>

7-17-01-01. Definitions.

As used in this article, unless the context requires otherwise, means:

1. "All life stages" means gestation/lactation, growth, and adult maintenance life stages.
2. "Family" means a group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, which has been successfully test-fed according to an association of American feed control officials feeding protocol.
3. "Immediate container" means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.
4. "Ingredient statement" means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.
5. "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-02

LABEL FORMAT AND LABELING

Section

7-17-02-01 **Label Format and Labeling**

7-17-02-01. Label format and labeling.

1. Pet food and specialty pet food must be labeled with the following information:
 - a. Product name and brand name, if any, on the principal display panel;
 - b. A statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel;
 - c. Quantity statement as defined in (section reference of the rules), by weight (pounds and ounces, and metric), liquid measure (quarts, pints, and fluid ounces, and metric) or by count, on the principal display panel;
 - d. Guaranteed analysis;
 - e. Ingredient statement;
 - f. A statement of nutritional adequacy or purpose if required;
 - g. Feeding directions if required;
 - h. A statement of calorie content; and
 - i. Name and address of the manufacturer or distributor.
2. When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information must appear on the outer container or wrapper.
3. A vignette, graphic, or pictorial representation on a pet food or specialty pet food label may not misrepresent the contents of the package.
4. The use of the word "proven" in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence.
5. No statement may appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product.
6. A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading.
7. A statement on a pet food or specialty pet food label stating "improved", "new", or similar designation must be substantiated and limited to six months production.
8. A statement on a pet food or specialty pet food label stating preference or comparative attribute claims must be substantiated and limited to one year production, after which the claim must be removed or resubstantiated.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-03
BRAND AND PRODUCT NAMES

Section
7-17-03-01 Brand and Product Names

7-17-03-01. Brand and product names.

1. The words "one hundred percent" or "all", or words of similar designation may not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one ingredient, not including decharacterizing agents, or trace amounts of preservatives and condiments.
2. An ingredient or combination of ingredients may form part of a product name of a pet food or specialty pet food when:
 - a. The ingredient constitutes at least ninety-five percent of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredients must constitute at least seventy percent of the total product weight.
 - b. When any ingredient constitutes at least twenty-five percent of the weight of the product, provided:
 - (1) Water sufficient for processing may be excluded when calculating the percentage. However, the ingredient must constitute at least ten percent of the total product weight;
 - (2) A descriptor is used with the ingredient name. This descriptor must imply other ingredients are included in the product formula; and
 - (3) The descriptor must be in the same size, style, and color print as the ingredient name.
 - c. When a combination of ingredients that are included in the product name in accordance with this section meets all of the following:
 - (1) Each ingredient constitutes at least three percent of the product weight, excluding water sufficient for processing;
 - (2) The names of the ingredients appear in the order of their respective predominance by weight in the product; and
 - (3) All such ingredient names appear on the label in the same size, style, and color print.
 - d. When the name of any ingredient appears in the product name of a pet food, specialty pet food, or elsewhere on the product label and includes a descriptor such as "with" or similar designation, the named ingredient must constitute at least three percent of the product weight exclusive of water sufficient for processing. If the names of more than one ingredient are shown, they must appear in their respective order of predominance by weight in the product. The three percent minimum level may not apply to claims for nutrients, such as vitamins, minerals, and fatty acids, as well as condiments. The word "with" or similar designation, and named ingredients must be in the same size, style, color, and case print, and be of no greater size than:

Panel Size	Max "With Claim" Type Size
<u>≤5 inches²</u>	<u>⅛ inch</u>
<u>>5 to ≤25 inches²</u>	<u>¼ inch</u>
<u>>25 to ≤100 inches²</u>	<u>⅜ inch</u>
<u>>100 to ≤400 inches²</u>	<u>½ inch</u>
<u>>400 inches²</u>	<u>1 inch</u>

e. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following:

(1) The flavor designation:

(a) Conforms to the name of the ingredient as listed in the ingredient statement; or

(b) Is identified by the source of the flavor in the ingredient statement; and

(2) The word "flavor" is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and

(3) Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request.

f. The product name of the pet food or specialty pet food may not be derived from one or more ingredients unless all ingredients are included in the name, except as specified by this rule, provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

(1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts that have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

(2) It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

g. Contractions or coined names referring to ingredients may not be used in the brand name of a pet food or specialty pet food unless it is in compliance with this rule.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-04

EXPRESSION OF GUARANTEES

Section
7-17-04-01 Expression of Guarantees

7-17-04-01. Expression of guarantees.

1. The "guaranteed analysis" must be listed in the following order and format unless otherwise specified in these rules:
 - a. A pet food or specialty pet food label must list the following required guarantees:
 - (1) Minimum percentage of crude protein;
 - (2) Minimum percentage of crude fat;
 - (3) Maximum percentage of crude fat, if required;
 - (4) Maximum percentage of crude fiber;
 - (5) Maximum percentage of moisture; and
 - (6) Additional guarantees shall follow moisture.
 - b. When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it must be guaranteed as a maximum percentage and must immediately follow moisture.
 - c. When listed on the label of a dog or cat food product, guarantees for dietary starch and sugars must be stated as maximum percentages. Neither guarantee must be listed without the other. The guarantee for dietary starch must follow ash, if also listed; or moisture, if ash is not listed. The guarantee for sugars must follow dietary starch.
 - d. A dog or cat food label must list other required or voluntary guarantees in the same order and units of the nutrients in the association of American feed control officials dog or cat food nutrient profiles. Guarantees for substances not listed in the association of American feed control officials dog or cat food nutrient profiles, or not otherwise provided for in these regulations, must immediately follow the listing of the recognized nutrients and must be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the association of American feed control officials dog or cat food nutrient profiles". The disclaimer must appear immediately after the last such guarantee in the same size type as the guarantees.
 - e. A specialty pet food label must list other required or voluntary guarantees in the same order and units of the nutrients in an association of American feed control officials recognized nutrient profile for the specific species; however, if no species-specific association of American feed control officials recognized nutrient profile is available, the order and units must follow the same order and units of nutrients in the association of American feed control officials cat food nutrient profile. Guarantees for substances not listed in an association of American feed control officials recognized nutrient profile for the specific species of animal must immediately follow the listing of recognized nutrients and must be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the "with the blank filled in by listing the specific association of American feed control officials recognized nutrient profile. This disclaimer must appear immediately after the last such guarantee in the same sized type as the guarantees.

Such a disclaimer may not be required unless an association of American feed control officials recognized nutrient profile is available for the specific species of specialty pet.

2. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label, for example "minimum crude protein 15-18 percent" is prohibited.

3. The label of a pet food or a specialty pet food that is formulated as and represented to be a mineral supplement must include:

a. Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an association of American feed control officials recognized nutrient profile, expressed as the element in units specified in the nutrient profile;

b. Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in the association of American feed control officials cat food nutrient profiles when no species-specific nutrient profile has been recognized by association of American feed control officials;

c. Mineral guarantees required by these rules may be expressed in milligrams per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

d. A weight equivalent (e.g., one fluid ounce equals twenty-eight grams) for liquid products.

4. The label of the pet food or a specialty pet food which is formulated as and represented to be a vitamin supplement must include:

a. Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an association of American feed control officials recognized nutrient profile, expressed in units specified in the nutrient profile;

b. Minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in the association of American feed control officials cat food nutrient profiles when no species-specific nutrient profile has been recognized by association of American feed control officials;

c. Vitamin guarantees required by these rules may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

d. A weight equivalent (e.g., one fluid ounce equals twenty-eight grams) for liquid products.

5. When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an association of American feed control officials recognized nutrient profile, such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following apply:

a. The product must meet the association of American feed control officials recognized nutrient profile;

b. The statement of comparison must be preceded by a statement that the product meets the association of American feed control officials recognized profile. However, this statement is not required provided that the nutritional adequacy statement as required by these rules appears elsewhere on the product label;

c. The statement of comparison of the nutrient content must constitute a guarantee, but need not be repeated in the guaranteed analysis; and

d. The statement of comparison may appear on the label separate and apart from the guaranteed analysis.

6. The maximum moisture declared on a pet food or specialty pet food label may not exceed seventy-eight percent or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and which are so labeled, may contain moisture in excess of seventy-eight percent.

7. Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement.

8. Guarantees for microorganisms and enzymes must be stated in the format as stipulated in model regulation 4g and 4h (check North Dakota Century Code).

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-05 **INGREDIENTS**

Section

7-17-05-01 Ingredients

7-17-05-01. Ingredients.

1. Each ingredient of a pet food or specialty pet food must be listed in the ingredient statement as follows:
 - a. The names of all ingredients in the ingredient statement must be shown in letters or type of the same size, style, and color;
 - b. The ingredients must be listed in descending order by their predominance by weight in nonquantitative terms;
 - c. Ingredients must be listed and identified by the name and definition established by association of American feed control officials; and
 - d. Any ingredient for which no name and definition have been so established must be identified by the common or usual name of the ingredient.
2. The ingredients "meat" or "meat byproducts" must be qualified to designate the animal from which the meat or meat byproducts are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses must be listed as "horsemeat" or "horsemeat byproducts".
3. Brand or trade names may not be used in the ingredient statement.
4. A reference to the quality, nature, form, or other attribute of an ingredient must be allowed when the reference meets all of the following:
 - a. The designation is not false or misleading;
 - b. The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and
 - c. A reference to quality or grade of the ingredient does not appear in the ingredient statement.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-06

DRUGS AND PET FOOD ADDITIVES

Section

7-17-06-01 Drugs and Pet Food Additives

7-17-06-01. Drugs and pet food additives.

1. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States food and drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, must be deemed to be satisfactory evidence that the color is, when used according to regulations, harmless to pets or specialty pets.

2. Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food that contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established:
 - a. When the pet food or specialty pet food contains such additives being used in compliance with the requirements of the applicable regulation under title 21, Code of Federal Regulations;
 - b. Which are "prior sanctioned", "informal review sanctioned", or "generally recognized as safe" for such use; or
 - c. When the pet food or specialty pet food itself is a drug or contains a drug as defined in subsection 7 of North Dakota Century Code section 4.1-41-01 and is "generally recognized as safe and effective" for the labeled use or is marketed subject to an application approved by the United States food and drug administration under title 21, United States code 360(b).

3. When a drug is included in a pet food or specialty pet food, the format required by subsection 1 of chapter 7-16-03 for labeling medicated feeds must be used.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-07

NUTRITIONAL ADEQUACY FEEDING

Section

7-17-07-01 Nutritional Adequacy

7-17-07-01. Nutritional adequacy.

1. The label of a pet food or specialty pet food that is intended for all life stages and sizes of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as "complete and balanced", "perfect", or "scientific" if at least one of the following apply:
 - a. The product meets the nutrient requirements for all life stages and sizes established by an association of American feed control officials recognized nutrient profile;
 - b. The product meets the criteria for all life stages as substantiated by completion of the appropriate association of American feed control officials recognized animal feeding protocol; or
 - c. The product is a member of a product family that is nutritionally similar to a lead product that contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by association of American feed control officials for all life stages, provided that:
 - (1) The nutritional similarity of the family product can be substantiated according to the procedures for establishing pet food product families developed by association of American feed control officials;
 - (2) The family product meets the criteria for all life stages; and
 - (3) Under circumstances of reasonable doubt, the state control official may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.
2. The label of a pet food or specialty pet food that is intended for a limited purpose, such as the size of dog or a specific life stage, but not for all sizes and life stages, may include a qualified claim such as "complete and balanced", "perfect", or "scientific" when the product and claim meet all of the following:
 - a. The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, "complete and balanced for puppies or kittens". The claim and the required qualification must be juxtaposed on the same label panel and in the same size, style, and color print; and
 - b. The product must meet at least one of the following:
 - (1) The nutrient requirements for the limited purpose or specific life stage established by an association of American feed control officials recognized nutrient profile;
 - (2) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate association of American feed control officials recognized animal feeding protocol; or
 - (3) The requirements of a product family that is nutritionally similar to a lead product that contains a combination of ingredients which, when fed for such limited purpose,

will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and provided that:

(a) The nutritional similarity of the family product can be substantiated according to the procedures for establishing pet food product families developed by association of American feed control officials;

(b) The family product meets the criteria for such limited purpose; and

(c) Under circumstances of reasonable doubt, the state control official may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy.

3. Dog and cat food labels must include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a "snack", "treat", or "supplement". The statement must consist of one of the following:

a. A claim that the dog or cat food meets the requirements of one or more of the recognized categories of nutritional adequacy: gestation and lactation, growth, maintenance, and all life stages. The claim must be stated verbatim as one of the following:

(1) "(Product name) is formulated to meet the nutritional levels established by the association of American feed control officials dog or cat food nutrient profiles for (stage of life, or the words "all life stages")." For a dog food, when the blank includes the words "growth" or "all life stages", one of the following phrases also must be added verbatim to the end of the claim:

(a) "Including growth of large size dogs (seventy pound or more as an adult)" if the product has been formulated to meet the levels of nutrients specifically referenced in the dog food nutrient profiles as being applicable to large size growing dogs; or

(b) "Except for growth of large size dogs (seventy pounds or more as an adult)" if the product has not been formulated to meet the levels of nutrients specifically referenced in the dog food nutrient profiles as being applicable to large size growing dogs; or

(2) "Animal feeding tests using association of American feed control officials procedures substantiate that (product name) provides complete and balanced nutrition for (life stage)."

(3) "(Product name) provides complete and balanced nutrition for (life stage) and is comparable in nutritional adequacy to a product that has been substantiated using association of American feed control officials feeding tests."

b. A nutritional or dietary claim for purposes other than those listed in this rule if the claim is scientifically substantiated;

c. The statement: "This product is intended for intermittent or supplemental feeding only", if a product does not meet the requirements of this rule or any other special nutritional or dietary need and is suitable only for limited or intermittent or supplementary feeding.

4. A product intended for use by, or under the supervision or direction of a veterinarian must make a statement in accordance with this rule.

5. A signed affidavit attesting that the product meets the requirements of this rule must be submitted to the state control official upon request.
6. If the nutrient content of a product does not meet those nutrient requirements established by an association of American feed control officials recognized nutrient profile, or if no requirement has been established by an association of American feed control officials recognized nutritional authority for the life stage of the intended species, the claimed nutritional adequacy or purpose of the product must be scientifically substantiated.
7. The following association of American feed control officials recognized nutritional authority, nutrient profile, and animal feeding protocol must be acceptable as the basis for a claim of nutritional adequacy:
 - a. As an association of American feed control officials recognized nutrient profile for nutritional authority:
 - (1) For dogs, the association of American feed control officials dog food nutrient profiles.
 - (2) For cats, the association of American feed control officials cat food nutrient profiles.
 - (3) For specialty pets, the nutrient recommendations approved by the committee on animal nutrition of the national research council of the national academy of sciences, provided that this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended.
 - b. As an association of American feed control officials recognized animal feeding protocol, the association of American feed control officials dog and cat food feeding protocols.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-08
DIRECTIVES STATEMENTS

Section

7-17-08-01 Feeding Directions

7-17-08-01. Feeding directions.

1. Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in these rules, must list feeding directions on the product label. These directions must be consistent with the intended use indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere. These directions must be expressed in common terms and must appear prominently on the label. Feeding directions, at a minimum, must state, "Feed (unit of product) per (weight) of dog or cat." The frequency of feeding also must be specified.
2. When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement "Use only as directed by your veterinarian." may be used in lieu of feeding directions.
3. Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in these rules, must list feeding directions on the product label. These feeding directions must be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the association of American feed control officials recognized nutritional authority. These directions must be expressed in common terms and must appear prominently on the label. The frequency of feeding also must be specified.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-09
CALORIE CONTENT DESCRIPTIVE

Section
7-17-09-01 Statements of Calorie Content

7-17-09-01. Statements of calorie content.

1. The label of a dog or cat food, including snacks, treats, and supplements, must bear a statement of calorie content and meet all of the following:

a. The statement must be separate and distinct from the "guaranteed analysis" and appear under the heading "calorie content";

b. The statement must be measured in terms of metabolizable energy on an "as fed" basis and must be expressed both as "kilocalories per kilogram" of product, and as kilocalories per familiar household measure (e.g. cups or cans) or unit of product; and

c. The calorie content is determined by one of the following methods:

(1) By calculation using the following "modified atwater" formula:

$ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$, where:

(a) ME = metabolizable energy;

(b) CP = percent crude protein as fed;

(c) CF = percent crude fat as fed;

(d) NFE = percent nitrogen-free extract as fed; and

(e) The percentages of CP and CF are the average values of these components in the product as determined by sound scientific methods, such as, scientifically accurate calculations made from the formula of the product of upon chemical analysis of the product.

(f) The NFE is calculated as the difference between one hundred and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash determined in the same manner as CP and CF; or

(2) In accordance with a testing procedure established by association of American feed control officials.

d. An affidavit must be provided upon the request of the state control official substantiating that the calorie content was determined by:

(1) Paragraph 1 of subdivision c in which case the summary data used in the calculation must be included in the affidavit.

(2) Paragraph 2 of subdivision c in which case the summary data used in the determination of calorie content must accompany the affidavit.

e. The calorie content statement must appear as one of the following:

(1) The heading "calorie content" on the label or other labeling must be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with paragraph 1 of subdivision c; or

(2) The heading "calorie content" on the label or other labeling must be followed parenthetically by the word "fed" when the calorie content is determined in accordance with paragraph 2 of subdivision c.

2. Comparative claims may not be false, misleading, or given undue emphasis and must be based on the same methodology for the products compared.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-10
TERMS MANUFACTURER

Section
7-17-10-01 Descriptive Terms

7-17-10-01. Descriptive terms.

1. Calorie terms:

a. "Light":

(1) A dog food product that bears on its label the terms "light", "lite", "low calorie", or words of similar designation must:

(a) Contain no more than three thousand one hundred kcal ME/kg for products containing less than twenty percent moisture, no more than two thousand five hundred kcal ME/kg for products containing twenty percent or more but less than sixty-five percent moisture, and no more than nine hundred kcal ME/kg for products containing sixty-five percent or more moisture;

(b) Include on the label a calorie content statement:

[1] In accordance with the format provided in chapter 7-17-09; and

[2] That states no more than three thousand one hundred kcal ME/kg for products containing less than twenty percent moisture, no more than two thousand five hundred kcal ME/kg for products containing twenty percent or more but less than sixty-five percent, and no more than nine hundred kcal ME/kg for products containing sixty-five percent or more moisture; and

(c) Include on the label feeding directions that reflect a reduction in calorie intake consistent with the intended use.

(2) A cat food product that bears on its label the terms "light", "lite", "low calorie", or words of similar designation must:

(a) Contain no more than three thousand two hundred fifty kcal ME/kg for products containing less than twenty percent moisture, no more than two thousand six hundred fifty kcal ME/kg for products containing twenty percent or more but less than sixty-five percent moisture, and no more than nine hundred fifty kcal ME/kg for products containing sixty-five percent moisture; and

(b) Include on the label a calorie content statement:

[1] In accordance with the format provided in chapter 7-17-09; and

[2] That states no more than three thousand two hundred fifty kcal ME/kg for products containing less than twenty percent moisture, no more than two thousand six hundred fifty kcal ME/kg for products containing twenty percent or more but less than sixty-five percent moisture, and no more than nine hundred fifty kcal ME/kg for products containing sixty-five percent or more moisture; and

(c) Include on the label feeding directions that reflect a reduction in calorie intake consistent with the intended use.

b. "Less" or "reduced calories":

(1) A dog or cat food product that bears on its label a claim of "less calories", "reduced calories", or words of similar designation, must include on the label:

(a) The name of the product of comparison and the percentage of calorie reduction expressed on an equal weight basis explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

(b) The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim;

(c) A calorie content statement in accordance with the format provided in chapter 7-17-09; and

(d) Feeding directions that reflect a reduction in calories compared to feeding directions for the product of comparison.

(2) A comparison between products in different categories of moisture content is misleading.

2. Fat terms:

a. "Lean":

(1) A dog food product that bears on its label the terms "lean", "low fat", or words of similar designation shall:

(a) Contain no more than nine percent crude fat for products containing less than twenty percent moisture, no more than seven percent crude fat for products containing twenty percent or more but less than sixty-five percent moisture, and no more than four percent crude fat for products containing sixty-five percent or more moisture;

(b) Include on the product label in the guaranteed analysis:

[1] A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guarantee specified in subdivision a of subsection 1 of section 7-17-04-01; and

[2] A maximum crude fat guarantee that is no more than nine percent crude fat for products containing less than twenty percent moisture, no more than seven percent crude fat for products containing twenty percent or more but less than sixty-five percent moisture, and no more than four percent crude fat for products containing sixty-five percent or more moisture.

(2) A cat food product that bears on its label the terms "lean", "low fat", or words of similar designation must:

(a) Contain a maximum percentage of crude fat which is no more than ten percent crude fat for products containing less than twenty percent moisture, no more than eight percent crude fat for products containing twenty percent or more but

less than sixty-five percent moisture, and no more than five percent crude fat for products containing sixty-five percent or more moisture; and

(b) Include on the product label in the guaranteed analysis:

[1] A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guarantee specified in subdivision a of subsection 1 of section 7-17-04-01; and

[2] A maximum percentage of crude fat that is no more than ten percent crude fat for products containing less than twenty percent moisture, no more than eight percent crude fat for products containing twenty percent or more but less than sixty-five percent moisture, and no more than five percent crude fat for products containing sixty-five percent or more moisture.

b. "Less" or "reduced fat":

(1) A dog or cat food product that bears on its label a claim of "less fat", "reduced fat", or words of similar designation, must include on the label:

(a) The name of the product of comparison and the percentage of fat reduction expressed on an equal weight basis explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

(b) The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

(c) A maximum crude fat guarantee in the guaranteed analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in subdivision a of subsection 1 of section 7-17-04-01.

(2) A comparison on the label between products in different categories of moisture content is misleading.

3. Carbohydrate terms:

a. "Low" carbohydrate, dietary starch, and sugars claims. A claim of "low carbohydrates", "low dietary starch", "low sugars" alone or in combination is not allowed.

b. "Less" or "reduced" carbohydrates, dietary starch, and sugars claims.

(1) A dog or cat food product that makes such statements on the label must include on that label:

(a) The name of the product of comparison and the percentage of reduction in total dietary starch plus sugars expressed on an equal weight basis explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and

(b) The comparative statement printed in type of the same color and style but not less than one-half the size used in the claim; and

(c) Maximum guarantees for dietary starch and sugars as stated in subdivision c of subsection 1 of section 7-17-04-01.

(2) A comparison between products in different categories of moisture content is misleading.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

CHAPTER 7-17-11
DISTRIBUTOR

Section

7-17-11-01 Manufacturer or Distributor; Name and Address

7-17-11-01. Manufacturer or distributor; name and address.

1. The label of a pet food or specialty pet food must specify the name and address of the manufacturer or distributor. The statement of the place of business must include the street address, city, state, and zip code. The street address may be omitted if the street address is shown in a current city directory or telephone directory for the city listed on the label.

2. When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-41-20

Law Implemented: NDCC 4.1-41-05

TITLE 10
ATTORNEY GENERAL

JULY 2020

CHAPTER 10-07-01

10-07-01-04. Fire prevention rules.

The fire prevention rules for this state include, but are not limited to, the following:

~~1.~~ **Fire code.** The State Fire Code includes:

~~a.1.~~ The provisions of the ~~present~~ State Building Code, effective January 1, 2020, providing for fire-safe construction and operation, as provided for in North Dakota Century Code section 54-21.3-03.

~~b.2.~~ The provisions of the International Fire Code (IFC), 2018 edition International Code Council (ICC), ~~current published edition to correspond to the year presently in use with the State Building Code~~, with the following ~~deletions and~~ exceptions and modifications:

~~(1) Section 103 Department of Fire Prevention.~~

~~(2) Section 105 Permits and any reference to.~~

~~(3) Section 108 Board of Appeals.~~

~~(4) Section 109 Violations.~~

~~(5) Section 113 Fees.~~

~~2. **Fire protection equipment.** The applicable standards of the national fire protection association shall be utilized for planning, installation, maintenance, and testing of all fire protection, alarm, extinguishing, and fire extinguishers in all instances.~~

~~3. **Explosives.** The standards, as defined within the regulations of the bureau of alcohol, tobacco and firearms under federal statutes and all standards for explosives as published by the national fire protection association shall be utilized in all applicable situations involving explosives or defined components.~~

~~4. **Fireworks.** The rules for public fireworks displays as defined in National Fire Protection Association Standard No. 1123 shall be used.~~

~~5. **Liquefied petroleum gases.** Regulations for the storage and handling of liquefied petroleum gases as defined within national fire protection standards shall be utilized in all applicable situations.~~

~~6. **Flammable and combustible liquids.** The standards for storage and handling of flammable and combustible liquids as defined within national fire protection association standards shall be utilized in all applicable situations.~~

a. Chapter 1. Scope and Administration:

101.1 Title. The words "[NAME OF JURISDICTION]" are replaced with "North Dakota".

102.1 Construction and design provisions. Subsection 3 does not apply.

102.4 Application of building code. Insert "as amended by the State of North Dakota" after the words "International Building Code" in both instances.

102.6 Historic buildings. Does not apply.

105.1.1 Permits required. The words "obtain the required permit" are replaced with "may be required to obtain a permit".

110.4 Violation penalties. Does not apply.

b. Chapter 2. Definitions.

Fireworks, 1.4G. After "1507" insert "1 or otherwise listed and defined in North Dakota Century Code section 23-15-01".

[BG] Group E, day care facilities. The word "five" is replaced with "twelve".

[BG] Five or fewer children. The word "five" is replaced with "twelve" in both instances in this paragraph.

[BG] Five or fewer children in a dwelling unit. The word "five" is replaced with "twelve" in both instances in this paragraph.

[BG] Institutional Group I-4, day care facilities. The word "five" is replaced with "twelve".

Classification as Group E. The word "five" is replaced with "twelve".

[BG] Five or fewer occupants receiving care. The word "five" is replaced with "twelve" in both instances in this paragraph.

[BG] Five or fewer occupants receiving care in a dwelling unit. The word "five" is replaced with "twelve" in both instances in this paragraph.

[BG] Care facilities within a dwelling. The word "five" is replaced with "twelve" and the words "provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the International Residential Code" are deleted.

c. Chapter 3. General Requirements.

308.1.4 Open-flame cooking devices. Exception 3. The words "2½ pounds [nominal 1 pound (0.454 kg) LP-gas capacity]" is replaced with "20 pounds (9.07 kg)".

308.1.3 Sky lanterns. Does not apply.

308.3 Group A occupancies. Exception 1. The following is added:
"1.4 Open-flame devices for food warming."

d. Chapter 5. Fire Service Features.

510.1 Emergency responder radio coverage in new buildings. In the first sentence, replace "New" with "Where required by the fire code official, new".

e. Chapter 9. Fire Protection and Life Safety Systems.

The following is added:

"905.1.1 Standpipe hose. The installation of fire hose on standpipes may be omitted when approved by the fire code official. Approved standpipe hose valves and connections shall be provided where required."

907.2.10.2 Groups R-2, R-3, R-4, and I-1. The following subsection is added:

"4. In dwelling units where the ceiling height of a room open to the hallway serving the sleeping rooms exceeds that of the hallway by twenty-four inches [610 mm] or more, smoke detectors must be installed in the hallway and in the adjacent room."

f. Chapter 10. Means of Egress.

1010.1.9.4 Locks and Latches. The following is added:

"7. Egress doors from occupied roofs, or doors used to gain access to the interior of the building may be locked from the outside if all of the following are provided:

7.1 Compliance with all aspects of Section 1010.1.9.4 subsection 2.

7.2 Compliance with section 1009.8.

7.3 The door locks must unlock on actuation of the automatic sprinkler system and automatic fire detection system and the door locking system must be installed to have the capability of being unlocked by a switch located at the fire command center."

1011.1 General. The following is added as an exception:

"Stairways used only to attend equipment or private stairways serving an occupant load of ten or fewer persons and which are not accessible to the public need not comply with sections 1011.2 through 1011.13."

1030.3. Maximum height from floor. The words "44 inches (1118 mm)" are replaced with "48 inches (1219.2 mm)".

g. Chapter 61. Liquefied Petroleum Gases.

6103.2.1.6 Use with self-contained torch assemblies. The words "2.7 pounds (1.2 kg)" are replaced with "12 pounds (5.44 kg)".

History: Effective November 1, 1983; amended effective January 1, 2015; July 1, 2020.

General Authority: NDCC 18-01-04, 18-01-33, 18-09-02, 23-15-03

Law Implemented: NDCC 18-01-02, 18-01-04, 18-01-33, 18-09-02, 23-15-03

TITLE 14
BARBER EXAMINERS, BOARD OF

JULY 2020

**ARTICLE 14-04
GENERAL ADMINISTRATIVE RULES FOR OPERATION OF BARBER SHOPS, SCHOOLS,
AND COLLEGES**

Chapter

14-04-01	Shop License and Records
14-04-02	Display and Possession of Regulations and Price Lists
14-04-03	Sunday Service [Repealed]
14-04-04	Equipment, Staff, and Notification Requirements
<u>14-04-05</u>	<u>Permits for Barber Schools and Colleges</u>

**CHAPTER 14-04-05
PERMITS FOR BARBER SCHOOLS AND COLLEGES**

Section

<u>14-04-05-01</u>	<u>Permits for Barber Schools and Colleges</u>
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14-04-05-01. Permits for barber schools and colleges.

The person, firm, corporation, or limited liability company operating a barber school or college shall mark on the application for permit whether the barber school or college is a secondary or postsecondary school.

1. If the person, firm, corporation, or limited liability company operating a barber school or college is marking that it is applying for a permit as a postsecondary school, the barber school or college shall require a high school diploma or equivalent certificate as a requirement for admission.
2. The person, firm, corporation, or limited liability company operating a barber school or college shall submit a copy of its application for admission or enrollment as a part of its application for a permit.
3. Each permit must designate whether the barber school or college is permitted as a secondary or postsecondary barber school or college.

History: Effective July 1, 2020.

General Authority: NDCC 43-04-11

Law Implemented: NDCC 43-04-27

TITLE 24.1
STATE ELECTRICAL BOARD

JULY 2020

CHAPTER 24.1-01-01

24.1-01-01-01. History and functions.

In 1917 legislation was approved which created a state board of electricians. In 1949 the name of the board was changed to the state electrical board. The board is charged with the responsibility to examine applicants and issue licenses to those having the necessary qualifications and knowledge in the laws of electricity and electrical codes. The board has jurisdiction over all electrical installations. ~~Electrical inspectors authorized by the board~~The executive director may condemn installations hazardous to life and property and order electric service to be discontinued.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 24.1-02-01

24.1-02-01-02. General statement of policy and interpretative rules.

1. Purpose and scope. The purpose of these standards is the practical safeguarding of persons and of buildings and building contents from electrical hazards arising from the use or control of electricity for light, heat, power, and control thereof ~~and of the~~ fire detection ~~system~~systems ~~and power limited systems~~. It covers the electrical ~~conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, railroad right of way and, also the conductors that supply street lighting, with the~~and power limited installations and associated equipment necessary ~~to~~for its safe operation.
2. These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical and power limited systems wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.
3. All requirements contained herein must be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, or an instruction manual for untrained ~~persons~~individuals. Skill and experience are necessary factors for a safe and adequate wiring installation. Whenever these requirements differ or are in conflict with the requirements of the NFPA 70 ~~2017~~2020 edition National Electrical Code and NFPA 101 ~~2015~~2018 edition Life Safety Code®, and applicable articles in locally adopted codes or North Dakota State Building Code pertaining to fire detection, fire alarms, fire communications, and smoke detectors, the more restrictive requirements are the minimum.
4. Severability. If any section, sentence or clause, or provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances are not affected thereby.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-05, 43-09-21, 43-09-22

CHAPTER 24.1-03-01 LICENSING REQUIREMENTS

Section

24.1-03-01-01	Application, Examination, and Annual License Fees
24.1-03-01-02	Master Electrician
24.1-03-01-03	Journeyman Electrician
24.1-03-01-04	Class B Electrician
24.1-03-01-05	Apprentice <u>Power Limited</u> Electrician
24.1-03-01-06	<u>Provisional Military Spouse Licensure</u>
<u>24.1-03-01-07</u>	<u>Apprentice Electrician</u>
<u>24.1-03-01-08</u>	<u>Power Limited Apprentice Electrician</u>
<u>24.1-03-01-09</u>	Supervision and Responsibilities

24.1-03-01-01. Application, examination, and annual license fees.

1. Upon receiving an application packet for an electrician's license from an applicant, the board shall process and review the applicant's employment verification of electrical construction experience as outlined under this section. Upon final approval of the application by the board, the applicant shall be sent an invitation to take the examination. The invitation shall outline the available testing dates. Upon receiving the invitation, the applicant shall contact the board and inform the board as to the date chosen to take the examination. Examination fees shall be paid separately to the examination testing center provider, if required.
2. ~~The person~~ An applicant shall have the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations of the National Electrical Code.
3. The board issues an identification card to currently licensed and registered electricians. This identification card, along with a government-issued picture identification card, shall be in the possession of the electrician when doing electrical work. If the identification card is misplaced or destroyed, a replacement charge to cover board costs shall be imposed.
4. The application fees are as follows:

a.	Master <u>license</u>	\$50.00
b.	Journeyman <u>license</u>	\$25.00
c.	Class B <u>license</u>	\$40.00
d.	<u>Apprentice registration</u>	<u>\$10.00</u>
e.	<u>Power limited license</u>	<u>\$50.00</u>
f.	<u>Power limited apprentice registration</u>	<u>\$10.00</u>
5. Effective November 1, 2020, annual renewals must be submitted electronically through the board's website.

The ~~annual~~ license and registration or annual renewal fees are as follows:

a.	Master license	\$50.00	Expires April thirtieth.
b.	Journeyman license	\$25.00	Expires March thirty-first.
c.	Class B license	\$40.00	Expires April thirtieth.

d.	Apprentice registration	\$10.00	January thirty-first.
e.	Power limited license	\$50.00	Expires April thirtieth.
f.	Power limited apprentice registration	\$10.00	January thirty-first.

Expired licenses and registrations shall require a reinstatement fee equal to the annual fee.

~~6. Licenses renewed after the expiration date require a reinstatement fee as follows:~~

~~a. Master license \$50.00.~~

~~b. Journeyman license \$25.00.~~

~~c. Class B license \$40.00.~~

~~d. Apprentice registration \$10.00.~~

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-13, 43-09-21, 43-09-22

24.1-03-01-02. Master electrician.

A master electrician shall have at least two thousand hours of experience working as a licensed journeyman electrician under the supervision of a contracting master electrician or master of record. There are three categories of master electricians, which are as follows:

1. A contracting master is ~~a person~~an individual responsible to adhere to all laws and rules of the North Dakota wiring standards and has shown proof of liability insurance.
2. A master of record is ~~a person~~an individual responsible to adhere to all laws and rules of the North Dakota wiring standards for the partnership, company, corporation, limited liability company, or association and has shown proof of liability insurance that the master of record is covered by the organization. The master of record is not allowed to work on other property other than property owned or leased by the organization.
3. A noncontracting master is ~~a person~~an individual responsible to adhere to all laws and rules of the North Dakota wiring standards and has the same responsibility as a journeyman electrician. Electrical work shall be done under the supervision of a contracting master or master of record.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24.1-03-01-03. Journeyman electrician.

A journeyman electrician shall have completed eight thousand hours experience, which experience may not be obtained in less than three years, registered as an apprentice electrician (of which up to three thousand hours may apply under the qualifications of a class B electrician) under the supervision of a contracting master or master of record licensed electrician in an area where electrical construction work is done in ~~the a~~ jurisdiction ~~regulating~~with similar licensing and inspection rules ~~of~~to the state of North Dakota, and successfully completed apprentice electrician training. Two thousand hours credit may be granted for a graduate of a two-year or more electrical school accepted by the board. Practical

experience consists of a minimum of four thousand hours and a maximum of eight thousand hours credit may be granted for wiring and installing electrical wiring, apparatus, and equipment. Practical electrical experience gained through a contracting master electrician also consists of an apprentice completing ~~an approved bureau of apprenticeship~~ a board-approved training program. Credit allowed in other areas may include any combination of the following:

1. A maximum of one thousand hours credit for repairing electrical wiring, apparatus, and equipment and light, heat, and power.
2. A maximum of one thousand hours credit for wiring fire alarm technology circuits or systems;
3. A maximum of two thousand hours credit for wiring process control circuits or power limited systems; and
4. A maximum of two thousand hours credit of electrical construction experience gained in the armed forces of the United States which the board has determined is equivalent to work performed under the supervision of a North Dakota licensed electrical contractor.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24.1-03-01-05. ~~Apprentice~~Power limited electrician.

~~There are two categories of apprentice electrician training:~~

- ~~1. Apprentice electricians who have successfully completed at least two years of electrical school approved by the board.~~
- ~~2. Apprentice electricians who have successfully completed five hundred seventy-six hours of training classes recognized by the United States department of labor office of apprenticeship. An unlicensed electrician who has prior experience outside of the state of North Dakota may take a placement examination equal to the verification of practical experience obtained in order to apply credit toward the verification of hours. If the electrician fails the placement examination, the electrician is ineligible to retake the examination. An appeal would need to be submitted in writing to the board.~~

~~An apprentice electrician who has not successfully completed training as stated in subsections 1 or 2 is required to be registered with the board, but is not eligible to take the journeyman or class B license examination. If the person receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North Dakota the person will not be eligible for examination for licensure or a reciprocal license.~~

A power limited electrician shall have completed six thousand hours experience, which experience may not be obtained in less than two and one-half years, registered as a power limited apprentice electrician under the supervision of a contracting master, master of record, contracting power limited, or a power limited of record electrician. Experience must be obtained where power limited electrical construction work is done in a jurisdiction with similar licensing and inspection rules to the state of North Dakota. The board also may approve licenses based on power limited education or a board-approved tradesman certification. Classification types of a power limited electrician must be defined by the board. There are three categories of power limited electricians, which are as follows:

1. A contracting power limited electrician is an individual responsible to adhere to all laws and rules of the North Dakota wiring standards and has shown proof of liability insurance.

2. A power limited electrician of record is an individual responsible to adhere to all laws and rules of the North Dakota wiring standards for the partnership, company, corporation, limited liability company, or association and has shown proof of liability insurance that the power limited electrician of record is covered by the organization. The power limited electrician of record is not allowed to work on other property other than property owned or leased by the organization.

3. A noncontracting power limited electrician is an individual responsible to adhere to all laws and rules of the North Dakota wiring standards. Power limited electrical work must be done under the supervision of a contracting master, master of record, or a contracting power limited electrician or a power limited electrician of record.

History: Effective April 1, 2017; amended effective January 1, 2018; July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC ~~43-09-21, 43-09-22~~43-09-11

~~24.1-03-01-06. Supervision and responsibilities~~Provisional military spouse licensure.

~~1. A licensed electrician shall supervise not more than three apprentices. Any person over sixteen years of age may work as an apprentice under a licensed master or class B electrician, but the master or class B electrician shall not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.~~

~~2. When an apprentice electrician is found to be doing electrical work not under the direct supervision of a licensed electrician, an investigative fee may be charged to cover the costs incurred by the board. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.~~

~~3. Electrical contractors shall maintain records of all employees who are or will be performing electrical work for that electrical contractor and shall permit the electrical board to examine and copy all such records as required by this section. It is the responsibility of the master or class B electrician to ensure all employees who are or will be performing electrical work for that electrical contractor either be licensed electricians or registered apprentices with the board.~~

~~4. Any master or class B electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative shall subject that person's license to nonrenewal, suspension, or revocation by the board.~~

~~5. A master or class B electrician may exercise that person's privileges as a licensed master or class B electrician for no more than one shop or business, and shall comply with provisions as required for contracting with the secretary of state's office as stated in North Dakota Century Code chapter 43-07. A master or class B electrician must be actively engaged in the supervision of every project certified under that electrician's license. A master or class B electrician shall notify the board office immediately upon changing from contracting status to noncontracting status for the shop or business they represent.~~

~~6. Maintenance personnel regularly employed by the owner may maintain or make minor repairs to existing electrical wiring devices and appliances, but are precluded from extending or changing the characteristics of existing circuits, feeders, or other electrical apparatus.~~

See North Dakota Century Code section 43-51-11.1

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC ~~43-09-21, 43-09-22~~43-51-11.1

24.1-03-01-07. Apprentice electrician.

There are two categories of apprentice electrician training:

1. Apprentice electricians who have successfully completed at least two years of electrical school approved by the board.
2. Apprentice electricians who have successfully completed five hundred seventy-six hours of training classes recognized by the board. An applicant who has prior experience outside of the state of North Dakota may take a placement examination to verify the practical experience obtained in order to apply credit toward the verification of hours. If the applicant fails the placement examination, the applicant is ineligible to retake the examination. An appeal may be submitted in writing to the board within thirty days.

An apprentice electrician who has not successfully completed training as stated in subsection 1 or 2 is required to be registered with the board, but is not eligible to take the journeyman or class B license examination. If the individual receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North Dakota the individual is not eligible for examination for licensure or a reciprocal license.

History: Effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-11, 43-09-15.1

24.1-03-01-08. Power limited apprentice electrician.

A power limited apprentice electrician shall meet the following requirements to be eligible for examination:

1. A power limited apprentice must be registered with the board under the same classification as the power limited electrician under whom the apprentice will be working and have completed six thousand hours of work experience under the direct supervision of a power limited electrician; or
2. A power limited apprentice must possess a valid board recognized tradesman certification. An applicant who has prior experience outside of the state of North Dakota may take a placement examination to verify the practical experience obtained in order to apply credit toward the verification of hours. If the applicant fails the placement examination, the applicant is ineligible to retake the examination. An appeal may be submitted in writing to the board within thirty days.

A power limited apprentice electrician who has not complied as stated in subsection 1 or 2 is not eligible to take the power limited electrician license examination. If the individual receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North Dakota, the individual is not eligible for examination for licensure or a reciprocal license.

History: Effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-11, 43-09-13.1

24.1-03-01-09. Supervision and responsibilities.

1. A licensed electrician shall supervise not more than three apprentices. Any individual over sixteen years of age may work as an apprentice under a licensed master, class B, or power limited electrician, but the master, class B, or power limited electrician may not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.
2. When an apprentice is found to be doing electrical or power limited work not under the direct supervision of a licensed electrician, an investigative fee may be charged to cover the costs incurred by the board. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.
3. Contractors shall maintain records of all individuals who are or will be performing electrical or power limited work for that contractor and shall permit the electrical board to examine and copy all such records as required by this section. It is the responsibility of the master, class B, or power limited electrician to ensure all individuals who are or will be performing electrical or power limited work for that contractor either be licensed electricians or registered apprentices with the board. Credit may not be given for hours spent working under a power limited electrician to any applicant for a master, journeyman, or class B electrician license.
4. Any master, class B, or power limited electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative shall subject that individual's license to nonrenewal, suspension, or revocation by the board.
5. A master, class B, or power limited electrician may exercise that person's privileges as a licensed master, class B, or power limited electrician for no more than one shop or business, and shall comply with provisions as required for contracting with the secretary of state's office as stated in North Dakota Century Code chapter 43-07. A master, class B, or power limited electrician must be actively engaged in the supervision of every project certified under that electrician's license. A master, class B, or power limited electrician shall notify the board office immediately upon changing their status for the business they represent.
6. Maintenance personnel regularly employed by the owner or property manager may maintain or make minor repairs to existing electrical wiring devices and appliances, but are precluded from extending or changing the characteristics of existing circuits, feeders, or other electrical apparatus.

History: Effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-05-15, 43-09-18, 43-09-21

ARTICLE 24.1-04
~~CONTINUING~~ EDUCATION

Chapter
24.1-04-01 ~~Continuing~~ Education Requirements

CHAPTER 24.1-04-01
~~CONTINUING~~ EDUCATION REQUIREMENTS

Section
24.1-04-01-01 ~~Course~~ Education Requirements for ~~License~~ ~~Licensure~~ and Renewal
24.1-04-01-02 ~~Course~~ Class Approvals
24.1-04-01-03 Instructor Qualifications
24.1-04-01-04 Education Advisory Committee

24.1-04-01-01. ~~Course~~ Education requirements for ~~license~~ ~~licensure~~ and renewal.

No master, journeyman, power limited, or class B electrician license will be renewed unless proof of eight continuing education hours have been submitted, of which a minimum of fifty percent of the hours shall be based on the NFPA 70 ~~2017~~ 2020 edition National Electrical Code. The remaining credits shall be subjects related to the electrical industry. Approval of the ~~course~~ education curriculum is required by the board.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24.1-04-01-02. ~~Course~~ Class approvals.

1. ~~Courses, seminars~~ Classes, apprenticeship programs, and instructors shall have prior approval by the board ~~to receive credit. Request for approval of courses, seminars, and instructors and requests for approval~~ shall be made no later than thirty days prior to class instruction. Board approval of ~~courses, seminars, continuing education classes~~ and instructors accepted expires when the board adopts an updated edition of the National Electrical Code. Approved apprenticeship programs shall be reviewed at intervals set by the board.
2. Application for approval of ~~courses~~ educational classes and instructors shall be on a form provided by the board. A complete description (detailed curriculum outlining the subject matter along with the time and sequence of each item) and copies of all materials provided to the attendants shall be submitted. All educational classes shall meet minimum education requirements set by the board.
3. ~~Continuing education~~ Education programs held in other states may be considered for credit if the program meets the requirements of the board.
4. The board shall be notified in writing no later than fifteen days prior to the date, time, and location of the ~~presentation~~ class. A representative of the board shall be entitled to attend without charge and have the authority to audit or review ~~continuing—education presentations~~ classes.
5. The board may withdraw approval of any educational ~~program~~ classes not in compliance with this section.
6. The provider of the ~~presentation~~ class shall forward an attendance list to the board on a form supplied by the board within fifteen days following the ~~presentation~~ class. A certificate of completion shall also be provided to each ~~licensee in attendance~~ attendee. Each certificate of completion and attendance list shall include the name of the provider, the name of the

instructor, the ~~course~~class identification number, the date and location of ~~presentation~~the class, and the number of code and noncode hours of instruction for ~~continuing~~ education units. For all classes, include the electrician's attendee's name, and the electrician's license or registration number, and last four digits of the electrician's social security number. It is the responsibility of the ~~licensee~~attendee to have a copy of this certificate of completion. The certificates shall be sent to the board only if requested ~~to do so~~ by the board. The provider shall be responsible to keep accurate attendance by periodically checking attendees during the class. For providers that conduct continuing education classes in North Dakota, the attendance record shall be submitted ~~electronically through~~to the ~~board's website~~board as required.

7. Continuing education credits can be deposited with the board for a period up to two license renewal periods. Continuing education credits will not be given for attending the same continuing education class more than once in a code cycle (example: same sponsor, same title, and same ~~course~~class approval number).

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24.1-04-01-03. Instructor qualifications.

Instructors shall submit their qualifications to the board before the ~~presentation of the course or seminar~~class. CoursesClasses may not be approved unless the instructor has one or more of the following qualifications:

1. A master electrician with at least one year's experience in electrical inspection.
2. A journeyman or master electrician who is certified as an instructor through a vocational education department.
3. ~~A person~~An individual with a valid teaching accreditation from a trade or technical school, college, or university teaching an electrical curriculum.
4. A registered or licensed electrical engineer with at least four years' experience in design of premise electrical wiring systems.
5. A representative from the national fire prevention association, testing laboratories, international association of electrical inspectors, and other product manufacturer representatives with five years' practical experience in the subject taught.
6. Instructor of an apprenticeship training program.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24.1-04-01-04. Education advisory committee.

1. The board shall form an education advisory committee to review educational classes and programs required by the board.
2. The committee shall develop minimum requirements in the area of study for the electrical education of individuals registered and licensed by the board.
3. The committee shall review the approved classes and programs every five years or as necessary and submit a report to the board for final approval.

4. The executive director shall preside over the committee meetings.
5. The committee shall meet as deemed necessary, but no less than once per year.
6. Committee members may be reimbursed expenses of mileage and travel as per North Dakota Century Code sections 44-08-04 and 54-06-09.
7. The education advisory committee members may consist of individuals selected from the following categories:
 - a. The executive director of the board.
 - b. The training administrator of the board.
 - c. A representative from a North Dakota college-approved electrical degree program.
 - d. A representative from a North Dakota college-approved off-campus electrical correspondence or online program.
 - e. A North Dakota registered professional electrical engineer.
 - f. A North Dakota master electrician who is certified as an instructor through a vocational education department.
 - g. A North Dakota journeyman electrician who is certified as an instructor through a vocational education department.
 - h. A North Dakota power limited electrician who is certified as an instructor through a vocational education department.
 - i. An individual having experience with an apprenticeship training program.

History: Effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-07, 43-09-15.1

CHAPTER 24.1-05-01

24.1-05-01-01. Electrical certificates.

1. All electrical installations, including ~~new jobs and additional work on old installations, made in this state~~ power limited system installations defined by the National Electrical Code Special Occupancies, articles 500 through 517, with a value of five hundred dollars or more, must have an electrical wiring certificate ~~or e-cert (electronic version of a wiring certificate) properly executed and~~ submitted by the master ~~or~~ class B, or power limited electrician supervising the installation ~~of electrical wiring. The board shall prescribe an e-cert form for a master or class B electrician licensed on or after the effective date of these rules~~ on a form prescribed by the board. A project with multiple address locations requires an electrical wiring certificate for each location.
2. Before work commences on any electrical installation when a new entrance is installed, an existing entrance is altered or repaired, a building is moved, when a mobile home feeder is installed, or when the cost of the repair work or additional installation exceeds five hundred dollars, the master or class B electrician supervising such installation shall submit an electrical wiring certificate and distribute as follows:
 - a. A startup copy of the certificate must be submitted to the board and a copy to the power company before work is commenced and before an electrical installation may be energized.
 - b. Within fifteen days of completion, use, or occupancy, whichever is first, the final paperwork must be submitted to the office of the board, along with the proper fee. The wiring certificate must be completed with the location and a proper description of work completed.
 - c. A copy must be retained by the master ~~or~~ class B, or power limited electrician.
 - d. A copy must be left in or on the panel or given to the owner.
3. Certificates with job cost of twenty thousand dollars or less are valid twelve months from the original filing date. A new wiring certificate must be filed on all unfinished work.
4. E-certs are available upon request and submission of an application from any master ~~or~~ class B, or power limited electrician holding a proper current license from the board. Electrical (paper) wiring certificates are available until August 31, 2020, or the effective date of the 2020 Laws, Rules & Wiring Standards. The master ~~or~~ class B, or power limited electrician is responsible for all certificates issued to and by that person. A charge of twenty-five dollars to cover board costs must be assessed on each lost electrical paper wiring certificate issued to any master ~~or~~ class B, or power limited electrician, unless returned to the board.
5. Whenever an electrical installation made by or under the supervision of a master ~~or~~ class B, or power limited electrician is commenced or in use without submitting an electrical wiring certificate, as directed in subsection 2, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of fifty dollars. In addition when time and travel are expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.
6. Property owners who are self-wiring or doing their own electrical work shall comply with the following before any electrical work commences:
 - a. Notify the board office of intent to self-wire.

- b. Must own and occupy the residential property or farmstead where the electrical work will be done.
- c. Review plans or drawings depicting wiring to be done with the local electrical inspector.
- d. Inspection fees will be calculated as stated in this section with a minimum of fifty dollars.
- e. Certification and inspection are required as stated in this section.

History: Effective April 1, 2017; amended effective January 1, 2018; July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24.1-05-01-02. Fees.

1. The electrical and power limited systems inspection fee shall be based on the total amount of the ~~electrical~~ contract or total cost to the owner, including extras. This includes power limited systems in National Electrical Code chapter 5 special occupancies, articles 500 through 517. The following items need not be included in the cost:
 - a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, and similar equipment.
 - b. Heating, ventilating, and air-conditioning (HVAC) units.
 - c. Electric motors, PLC, generators; and
 - d. Industrial machines.
2. The ~~electrical~~ contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the ~~electrical~~ contractor furnishes the labor, the owner shall provide the ~~electrical~~ contractor with the total amount expended for ~~electrical~~ materials used in connection with the installation, and the ~~electrical~~ contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever ~~electrical~~ materials are donated or removed from an existing installation and placed at another location or labor is donated to an installation, the ~~electrical~~ contractor shall estimate the cost of these materials and labor and include the amount in the job cost for the purpose of calculating the proper inspection fee. The contractor shall maintain all job-related records for a minimum of four years and shall permit the board to examine and copy all such records as requested.
3. It shall be grounds for discipline of a master-~~or~~, class B, or power limited electrician's license if it is discovered that they charged or collected from the customer an electrical inspection fee greater than the fee actually in effect.
4. ~~Inspection~~Effective July 1, 2020, inspection fees shall be as follows:

Job Cost:	Inspection Fee:
Up to \$500.00	\$25.00 <u>\$50.00</u> (minimum fee)
\$500.00 to \$3,000.00 <u>\$20,000.00</u>	\$25.00 <u>\$50.00</u> for the first \$500.00 plus 2% <u>1.25%</u> on balance up to \$3,000.00 <u>\$20,000.00</u>
\$3,000.00 to \$10,000.00	\$79.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	\$184.00 for the first \$10,000.00 plus 1% on balance

	up to \$15,000.00
\$15,000.00 to \$100,000.00	\$234.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00 <u>\$20,000.00</u>	\$659.00 <u>\$293.75</u> for the first \$100,000.00 <u>\$20,000.00</u> plus 1/4 <u>1/10</u> of 1% on balance <u>over \$20,000.00</u>

Effective July 1, 2024, inspection fees shall be as follows:

<u>Job Cost:</u>	<u>Inspection Fee:</u>
<u>Up to \$500.00</u>	<u>\$50.00 (minimum fee)</u>
<u>\$500.00 to \$20,000.00</u>	<u>\$50.00 for the first \$500.00 plus 2% on balance up to \$20,000.00</u>
<u>Over \$20,000.00</u>	<u>\$440.00 for the first \$20,000.00 plus 1/10 of 1% on balance over \$20,000.00</u>

5. Companies having supervision of elevators, dumbwaiters, electrically driven irrigation machine or out-of-state structures or skids installed in North Dakota shall submit reports to the board. The report shall be completed, signed by owner or manager, and forwarded to the board with the inspection fee. The inspection fee shall be as follows:
 - a. Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$25.00
 - b. Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$40.00
 - c. Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$60.00
 - d. Electrically driven irrigation machines - \$50.00
 - e. Out-of-state structures or skids - Based on inspection fee schedule.
6. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of fifty dollars, which shall be paid to the board by the master-~~of~~, class B, or power limited electrician.
7. All reinspections shall be paid for by the ~~electrical~~ contractors at a ~~cost of fifty dollars per hour with a~~ minimum charge of one hundred dollars. In addition, an investigative fee may be charged to cover the costs incurred to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.
8. For inspections not covered in this section or special services, the fee shall be fifty dollars per hour, including travel time, plus mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile traveled.

History: Effective April 1, 2017; amended effective January 1, 2018; July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

ARTICLE 24.1-06 ELECTRICAL WIRING STANDARDS

Chapter	
24.1-06-01	General Requirements
24.1-06-02	Wiring and Protection
24.1-06-03	Wiring Methods and Materials
24.1-06-04	Appliances
24.1-06-05	Special Occupancies
<u>24.1-06-06</u>	<u>Special Equipment</u>

CHAPTER 24.1-06-01

24.1-06-01-40. Smoke alarms, heat alarms, fire alarm systems, and carbon monoxide alarm requirements for evacuation and life safety.

Alarm systems stated in this section shall be installed in accordance with the locally adopted codes or the State Building Code and state fire code under the supervision of a master or class B electrician. In new construction, all alarm systems shall receive their primary power from the building wiring and when primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection.

1. Dwelling units, congregate residences, and hotel or lodging house guest rooms that are used for sleeping purposes shall be provided with smoke alarms. Alarms shall be installed in accordance with the approved manufacturer's instructions.
 - a. When more than one smoke alarm is required to be installed within an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. Smoke alarms shall be installed in the following locations:
 - (1) In each sleeping room.
 - (2) Outside each separate sleeping area in the immediate vicinity of the bedroomssleeping rooms.
 - (3) On each additional story of the dwelling, including basements and habitable attics but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
 - (4) In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches [60.96 centimeters] or more, smoke alarms shall be installed in the hallway and in the adjacent room.
 - b. Heat alarms. For new construction, an approved heat alarm shall be installed in the attached single tenant garage of a residence and interconnected with the smoke alarms within the residence.
 - c. Household fire alarm systems installed in accordance with NFPA 72 that include smoke alarms, or a combination of smoke detectors and audible notification device installed as required by this section for smoke alarms, shall be permitted. The household fire alarm system shall provide the same level of smoke detection and alarm as required by this section for smoke alarms. Where a household fire warning system is installed using a combination of smoke detector and audible notification device, it shall become a permanent fixture of the occupancy and owned by the homeowner. The system shall be

monitored by an approved supervising station and be maintained in accordance with NFPA 72 upper level.

2. Apartment houses, hotels, and congregate residences shall be provided with a manual and automatic fire alarm system in accordance with the requirements of locally adopted codes or the State Building Code and state fire codes.
3. An approved carbon monoxide alarm shall be installed ~~outside of each separate sleeping area in the immediate vicinity of the bedrooms~~ in the following areas of dwelling units ~~within~~ which contain fuel-fired appliances ~~are installed and in dwelling units~~ or that have attached garages:
 - a. In each sleeping room;
 - b. Outside each sleeping room in the immediate vicinity of each sleeping room;
 - c. One on a level where sleeping rooms are not present; and
 - d. In a mechanical room.

A table in the appendix is offered as a condensed guide for convenience. For further information consult the locally adopted codes or the State Building Code and state fire codes.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

CHAPTER 24.1-06-02

24.1-06-02-10. (NEC 210) Branch circuits.

Branch circuits shall comply with article 210, 2017 edition, National Electrical Code.

1. The total connected load shall be divided as evenly as practicable, between the two ungrounded conductors of a threewire system and three conductors of a four-wire wye system.
2. In a dwelling unit, a separate circuit with disconnect shall be provided for the purpose of operating or controlling electrical equipment ~~on~~for primary source heating units. Wiring requirements for fixed electrical space heating equipment is provided under article 424, ~~2017~~2020 edition, National Electrical Code.
3. A minimum of six 20-amp small appliance branch circuits shall be installed for counter receptacles in kitchens that may be used to serve public gatherings at schools, churches, lodges, and similar buildings. Any island counter in these locations shall have at least one receptacle.
4. In dwelling occupancies. A minimum of three 20-amp small appliance branch circuits shall be installed to supply receptacle outlets in kitchen, pantry, dining room, and breakfast room. These circuits shall not supply other outlets and shall have conductors not smaller than no. 12. Two of these circuits shall supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit.
5. In dwelling occupancies, one 20-amp bathroom circuit for receptacles shall not feed more than two bathrooms.
6. Fifteen and twenty ampere ~~125-volt~~ receptacles supplying sewer pumps and sump pumps shall not need arc fault circuit protection, but shall be ground-fault protected or a single receptacle ~~shall be installed in an enclosure that is lockable~~on a dedicated circuit.
7. Fifteen and twenty ampere ~~125-volt~~ receptacles supplying power for garage door openers located in attached or detached garages associated with dwelling units shall be ground-fault protected or a single receptacle installed.
8. Portable cleaning equipment receptacle outlets shall be installed in corridors and located so that no point in the corridor along the floor line, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet.
9. Exception: 2017 edition, National Electrical Code, article 210.11(C)(4): Requirements shall not include buildings two hundred fifty square feet or smaller.
10. Exception: ~~2017~~2020 edition, National Electrical Code, article 210.12(A): AFCI protection is not required for ~~refrigeration~~the following:
 - a. Refrigeration appliances if a single receptacle on a dedicated circuit is installed;
 - b. Furnaces used for main heating source.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

CHAPTER 24.1-06-05

24.1-06-05-50. (NEC 550) Mobile home parks.

~~1. Mobile homes, manufactured homes, and mobile home parks shall comply with article 550, 2017 edition, National Electrical Code.~~

~~2.~~ Service equipment may be installed on manufactured homes as required in article 550.32(b) if the following requirements are met:

~~a.~~1. The mobile home is located on property owned by the homeowner and not in mobile home park.

~~b.~~2. The mobile home is secured to a permanent foundation that complies with locally adopted codes or the State Building Code.

History: Effective April 1, 2017; amended effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

**CHAPTER 24.1-06-06
SPECIAL EQUIPMENT**

Section

- 24.1-06-06-01 [Reserved]
- 24.1-06-06-02 [Reserved]
- 24.1-06-06-03 [Reserved]
- 24.1-06-06-04 [Reserved]
- 24.1-06-06-05 [Reserved]
- 24.1-06-06-06 [Reserved]
- 24.1-06-06-07 [Reserved]
- 24.1-06-06-08 [Reserved]
- 24.1-06-06-09 [Reserved]
- 24.1-06-06-10 [Reserved]
- 24.1-06-06-11 [Reserved]
- 24.1-06-06-12 [Reserved]
- 24.1-06-06-13 [Reserved]
- 24.1-06-06-14 [Reserved]
- 24.1-06-06-15 [Reserved]
- 24.1-06-06-16 [Reserved]
- 24.1-06-06-17 [Reserved]
- 24.1-06-06-18 [Reserved]
- 24.1-06-06-19 [Reserved]
- 24.1-06-06-20 [Reserved]
- 24.1-06-06-21 [Reserved]
- 24.1-06-06-22 [Reserved]
- 24.1-06-06-23 [Reserved]
- 24.1-06-06-24 [Reserved]
- 24.1-06-06-25 (NEC 625) Electric Vehicle Charging System

24.1-06-06-01. [Reserved].

24.1-06-06-02. [Reserved].

24.1-06-06-03. [Reserved].

24.1-06-06-04. [Reserved].

24.1-06-06-05. [Reserved].

| 24.1-06-06-06. [Reserved].

| 24.1-06-06-07. [Reserved].

| 24.1-06-06-08. [Reserved].

| 24.1-06-06-09. [Reserved].

| 24.1-06-06-10. [Reserved].

| 24.1-06-06-11. [Reserved].

| 24.1-06-06-12. [Reserved].

| 24.1-06-06-13. [Reserved].

| 24.1-06-06-14. [Reserved].

| 24.1-06-06-15. [Reserved].

| 24.1-06-06-16. [Reserved].

| 24.1-06-06-17. [Reserved].

24.1-06-06-18. [Reserved].

24.1-06-06-19. [Reserved].

24.1-06-06-20. [Reserved].

24.1-06-06-21. [Reserved].

24.1-06-06-22. [Reserved].

24.1-06-06-23. [Reserved].

24.1-06-06-24. [Reserved].

24.1-06-06-25. (NEC 625) Electric vehicle charging system.

625.41 Overcurrent protection. Overcurrent protection for feeders and branch circuits supplying vehicle charging equipment must be sized for continuous duty and must have a rating of not less than one hundred twenty-five percent of the maximum load of the equipment. For these installations, "maximum load of equipment" means the setting the electrician adjusted the device to. The adjustment may not be readily accessible or cannot easily be adjusted by the consumer. The electrician shall label the device if set to a value less than the maximum nameplate rating. The contractor shall assure the size of the service feeding these devices is adequate.

History: Effective July 1, 2020.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

TITLE 33
STATE DEPARTMENT OF HEALTH

JULY 2020

**CHAPTER 33-03-24.1
BASIC CARE FACILITIES**

Section

33-03-24.1-01	Definitions
33-03-24.1-02	Certificate of Need [Repealed]
33-03-24.1-03	Issuance of License
33-03-24.1-04	Waiver Provision
33-03-24.1-05	Plans of Correction
33-03-24.1-06	Enforcement Actions
33-03-24.1-07	Reconsideration of Enforcement Actions
33-03-24.1-08	Appeals
33-03-24.1-09	Governing Body
33-03-24.1-10	Fire Safety
33-03-24.1-11	Education Programs
33-03-24.1-12	Resident Assessments and Care Plans
33-03-24.1-13	Resident Records
33-03-24.1-14	Personal Care Services
33-03-24.1-15	Pharmacy and Medication Administration Services
33-03-24.1-16	Social Services
33-03-24.1-17	Nursing Services
33-03-24.1-18	Dietary Services
33-03-24.1-19	Activity Services
33-03-24.1-20	Housekeeping and Laundry Services
33-03-24.1-21	Adult Day Care Services
33-03-24.1-22	General Building Requirements [Repealed]
33-03-24.1-23	Optimal End-of-Life Care Service Services
33-03-24.1-24	Optional Alzheimer's, Dementia, Special Memory Care, or Traumatic Brain Injury Facility or Unit Services

33-03-24.1-01. Definitions.

1. "Abuse" includes the willful infliction of mental, physical, sexual, and verbal abuse which could result in temporary or permanent mental, physical, emotional, or psychological injury or harm. Mental abuse includes humiliation, harassment, intimidation, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, kicking, unreasonable confinement, and deprivation, by an individual, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or

gestured language that includes disparaging and derogatory terms to residents or their families, used within their hearing distance to describe the residents, regardless of their age, ability to comprehend, or disability.

2. "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including eating, nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.
 - a. "Assistance" means the resident is able to help with most of an activity, but cannot do it entirely alone. The resident may need prompting, encouragement, or the minimal hands-on assistance of the personal care attendant.
 - b. "Independent" means the resident can perform the activities of daily living without help.
3. "Activity staff" means an employee who is responsible for providing an activity program.
4. "Adult day care services" means the provision of basic care facility services to meet the needs of individuals who do not remain in the facility overnight.
5. "Basic care facility" means a facility licensed by the department under North Dakota Century Code chapter 23-09.3 whose focus is to provide room and board and health, social, and personal care to assist the residents to attain or maintain their highest level of functioning, consistent with the resident assessment and care plan, to five or more residents not related by blood or marriage to the owner or manager. These services shall be provided on a twenty-four-hour basis within the facility, either directly or through contract, and shall include assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; and supervision of nutritional needs and medication administration.
6. "Capable of self-preservation" means a resident's ability, with or without assistance, to evacuate the facility or relocate from the point of occupancy to a point of safety in case of fire in compliance with the requirements of this chapter.
7. "Department" means the North Dakota state department of health.
8. "End-of-life care" means a program of palliative and supportive care for a resident with a ~~physician or nurse~~ licensed health care practitioner's order identifying a terminal illness or condition with a limited prognosis of six or fewer months to live ~~that has elected to receive hospice services through a licensed and Medicare-certified hospice agency.~~
9. "Facility" means a basic care facility.
10. "Governing body" means the entity legally responsible for the operation of a basic care facility.
11. "Instrumental activities of daily living" includes preparing meals, shopping, managing money, housework, laundry, transportation, use of telephone, and mobility outside the basic care facility.
12. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.
13. "Medication administration" means an act in which a drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts, and may include a licensed health care practitioner, licensed nurse, or medication assistant.

14. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a resident's belongings or money, or both.
15. "Neglect" includes failure to carry out resident services as directed or ordered by the licensed health care practitioner or other authorized personnel, or failure to give proper attention to residents.
16. "Personal care" means assistance with activities of daily living and instrumental activities of daily living and general supervision of physical or mental well-being.
17. "Resident" means an individual admitted and retained in a facility in order to receive room and board and health, social, and personal care who is capable of self-preservation, and whose condition does not require continuous, twenty-four-hour a day onsite availability of nursing or medical care.
18. "Restricting device" means any device which limits a resident from freely exiting the facility or unit, including pressure devices which delay the time frame in which a door will open.
19. "Secured facility" means a facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility that has restricting devices to restrict residents from freely exiting the building.
20. "Secured unit" means a specific area of the facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care unit that has a restricting device separating the residents in the unit from the residents in the remainder of the facility.
21. "Significant medication error" means a medication error which causes the resident discomfort or jeopardizes his or her health and safety, or a pattern of more than three medication errors that has the potential for causing a negative impact or harm to residents.
22. "Unsecured facility" means a facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility without restricting devices to restrict residents from freely exiting the building.
23. "Unsecured unit" means a specific area of the facility that is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care unit that is separate from the residents in the remainder of the facility without a restricting device.

History: Effective January 1, 1995; amended effective January 1, 2008; July 1, 2015; January 1, 2018; [July 1, 2020](#).

General Authority: NDCC 23-09.3-09, 28-32-02(1)

Law Implemented: NDCC 23-09.3

33-03-24.1-23. ~~Optional end-of-life care service~~ End-of-life services.

A facility that ~~intends to retain~~retains residents who require end-of-life care continues to be responsible for the care and services of all residents, must comply with the requirements of this section, and apply on ~~an application as specified by the department, and receive written approval from the department prior to providing the services. The facility must meet the following requirements:~~basic care application form and indicate a change in services provided.

1. A facility may ~~not~~ retain residents who require more than intermittent nursing care ~~unless~~if the resident requires ~~and elects to receive~~ end-of-life care ~~from a licensed and Medicare-certified hospice agency and~~ chooses to remain in the facility ~~is licensed to provide end-of-life care.~~

2. A facility providing end-of-life care must employ or contract with a registered nurse to supervise resident care to meet the needs of the residents at all times, either directly or indirectly. The facility must employ a licensed nurse ~~who is on the premises at least forty hours per week~~ to identify and respond to resident needs, care plan accordingly, provide oversight related to care, and review and document the resident's individual needs and care provided.

3. The facility, the resident in need of end-of-life care, or the resident's designee may contract with a person or hospice agency to meet the needs of the resident.

4. Individuals in need of end-of-life care who require skilled nursing care or are not capable of self-preservation may not be admitted.

~~4. The facility and the licensed and Medicare-certified hospice agency shall enter into an agreement that delineates responsibilities, with the licensed and Medicare-certified hospice agency retaining the professional management responsibility for the hospice service.~~

5. ~~The facility and licensed and Medicare-certified hospice agency in consultation with the resident,~~ in consultation with the resident or resident's designee, shall develop and implement an interdisciplinary care plan that identifies how the resident's needs are met and includes ~~the following:~~

~~a. What services are to be provided;~~

~~b. Who will provide the services, the facility or hospice agency;~~

~~c. How the services will be provided;~~

~~d. Delineation~~delineation of the roles of facility staff and ~~the hospice agency~~others in the care plan process;

~~e. Documentation of the care and services that are provided with the signature of the person who provided the care and services; and~~

~~f. A~~provision of care and services for the resident in need of end-of-life care and a list of ~~the current medications or biologicals~~ the resident receives related to end-of-life care and who is authorized to administer the medications.

~~6. The facility shall notify the department within forty-eight hours of election that the resident has elected hospice, the date the hospice was elected, and the name of the hospice agency serving the resident.~~

~~7. The facility shall notify the department within forty-eight hours of the hospice resident's discharge, transfer, death, or when the resident is no longer capable of self-preservation.~~

~~8. A facility that retains a resident requiring end-of-life care that is not capable of self-preservation shall be equipped with an approved automatic sprinkler system designed to comply with the national fire protection association standard 13 or 13R, or shall meet the national fire protection association 101 Life Safety Code, 2012 edition, health care occupancy requirements.~~

9-6. Facility evacuation or E scores ~~shall~~must be completed ~~at a minimum of weekly and~~ when there is a significant change in the resident's capability for self evacuation when a resident is receiving end-of-life care. A significant change for the resident is defined as any change in the resident's status or capabilities which results in a change in the E score for that resident. Facility staffing must be adjusted consistent with the E scores to maintain a slow evacuation capability. ~~Hospice~~The fire evacuation needs of the resident receiving end-of-life care may be

met by facility staff that wraps around hospice staff, family members, the resident's designee, or volunteers, or other nonfacility staff cannot replace required facility staff.

~~10.7.~~ If a facility approved to provide provides end-of-life care to residents, the facility shall ensure training and competency evaluation is completed for all nursing and personal care staff members specific to the care and services necessary to meet the needs of the terminally ill resident, and the hospice philosophy and services. The training and competency evaluation may must be completed, and documented, by the facility registered nurse, a registered nurse consultant, or a hospice prior to caring for a resident in need of end-of-life care. The facility staff must be trained by a nurse. Training of the other individuals may be completed by any of the following:

a. Facility personnel;

b. Other experts;

c. Nurse or nurse consultant; or

d. Hospice agency nurse. Nursing and personal care staff members shall complete the above training and competency evaluation:

~~a. Prior to facility approval from the department to provide end-of-life care;~~

~~b. Within thirty days of employment; and~~

~~c. Annually.~~

~~11. A facility that intends to retain residents who require end-of-life care shall comply with the additional requirements in this section and request and receive approval on a printed new license from the department, prior to providing end-of-life care to residents.~~

If the facility utilizes family, volunteers, or the resident's designee to provide end-of-life care, the facility shall ensure appropriate training for these individuals specific to the care and services provided by this person. The facility shall assure the competency of the individual for this task and address changes if the needs of the resident are not being met.

~~12.8. The facility approved and licensed to retain residents in need of end-of-life care remains responsible for the appropriate delivery of end-of-life care in coordination with the licensed and Medicare-certified hospice agency. If the facility is unable, or becomes unable, to meet the needs of the resident requiring end-of-life care, the resident rescinds election of the hospice benefit, or the facility is unable to comply with these requirements, the facility shall promptly make arrangements to discharge or transfer the resident to a safe and appropriate placement location consistent with the level of care required to meet the resident's needs.~~

History: Effective July 1, 2015; amended effective July 1, 2020.

General Authority: NDCC 23-09.3-09, 28-32-02

Law Implemented: NDCC 23-09.3-04, 23-09.3-08.1, 23-09.3-09

CHAPTER 33-07-01.1

33-07-01.1-22. Laboratory services.

1. General acute hospitals shall have a well-organized, adequately supervised, clinical laboratory service available with the necessary space, facilities, and equipment and qualified, licensed staffing to perform these services commensurate with the hospital's needs for its patients. At a minimum, the hospital must adhere to the following:
 - ~~a. The medical director of laboratory service must be a physician who is a member of the medical staff with delineated clinical privileges for interpretation of diagnostic studies.~~
 - ~~b. The medical director of the laboratory service shall assure procedures and tests are within the scope of education, training, and experience of the individuals employed to perform technical procedures in the laboratory.~~ Laboratory services must be provided in accordance with the clinical laboratory improvement amendments at 42 Code of Federal Regulations part 493.
 - ~~e.b.~~ Provisions must be made to assure twenty-four-hour availability of emergency laboratory services either directly or through contract.
 - ~~d. Examination in the fields of hematology, chemistry, microbiology, sero-immunology, clinical microscopy, and other services necessary to meet patient care needs must be provided within the hospital or by contractual agreement.~~
 - ~~e.c.~~ All clinically relevant surgically removed tissues must be examined by a pathologist consistent with hospital policy and signed reports must be included in the patient's medical record. ~~If the hospital provides anatomical~~ Anatomical pathology services, ~~such~~ may be provided either by the hospital directly or per contractual arrangement with a certified laboratory. Written policies and procedures must be established through the medical staff and pathologist governing prompt transportation of specimens and submission of reports.
 - ~~f. There must be a quality control program designed to ensure reliability of the laboratory data and which includes written provisions for no less than:~~
 - ~~(1) The method of quantitative and qualitative testing and the frequency of control performance, including control data and evaluation criteria.~~
 - ~~(2) The frequency and method of quality control testing and calibration of instruments, equipment, and commercially prepared testing kits.~~
 - ~~(3) A preventive and corrective maintenance program for instruments and equipment involved in laboratory testing.~~
 - ~~(4) Participation in an approved external proficiency testing program if one is available.~~
 - ~~(5) Maintenance of records documenting all quality control and related activities.~~
 - ~~g.d.~~ An autopsy service must be provided either directly by the hospital or by contractual arrangement with another institution having an approved laboratory. Hospitals providing the service directly must have adequate space, equipment, and personnel for services provided.
 - ~~h.e.~~ Each hospital shall provide appropriate facilities and equipment for the procurement, storage, safekeeping, and administration of whole blood and blood products either directly or through ~~participation in a multifacility community blood collection, storage, and~~

~~processing system~~contractual arrangement. Written policies and procedures for all phases of operation of blood banks and transfusion services must be established and revised as needed.

~~i. Reports indicating the name and address of the testing laboratory must be authenticated, dated, and clearly indicate the results of all pathological and clinical laboratory examinations, including autopsies, and made part of the patient's medical record.~~

2. ~~The primary~~Primary care hospital shall maintain, or have available through contract, clinical laboratory services adequate to fulfill the needs of its patients and meeting the following:hospitals are subject to the laboratory services requirements for general acute hospitals in this section.

~~a. The hospital, at a minimum, shall provide basic laboratory services essential to immediate diagnosis and treatment, including:~~

~~(1) Chemical examinations of urine by stick or tablet methods, or both (including urine ketones).~~

~~(2) Hemoglobin or spun hematocrit.~~

~~(3) Blood sugar by whole blood testing device.~~

~~(4) Examination of stool specimens for occult blood.~~

~~(5) Primary culturing for transmittal to a certified laboratory.~~

~~b. The hospital shall provide, or have a contractual agreement with a certified laboratory for, any additional laboratory services that are needed by a patient.~~

~~c. Emergency provision of basic laboratory services must be available twenty-four hours a day.~~

~~d. The hospital shall assign personnel to direct and conduct the laboratory services.~~

~~e. Only personnel designated as qualified by the medical staff by virtue of education, experience, and training may perform and report laboratory test results.~~

~~f. Each hospital shall provide appropriate facilities and equipment for the procurement, storage, safekeeping, and administration of whole blood and blood products either directly or through participation in a multifacility community blood collection, storage, and processing system. Written policies and procedures for all phases of operation of blood banks and transfusion services must be established and periodically revised.~~

3. Specialized hospitals shall provide laboratory services to meet the needs of patients served consistent with the laboratory services requirements for general acute hospitals in this section. If onsite laboratory services are not necessary to meet the needs of patients served, ~~such as in hospitals serving only psychiatric or substance abuse patients~~, the laboratory services may be provided through a contractual agreement with a certified laboratory.

History: Effective April 1, 1994; amended effective July 1, 2020.

General Authority: NDCC 23-01-03(3), 28-32-02

Law Implemented: NDCC 23-16-06

TITLE 33.1
DEPARTMENT OF ENVIRONMENTAL QUALITY

JULY 2020

ARTICLE 33.1-14
~~[RESERVED]~~ NORTH DAKOTA BOILER RULES

Chapter

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CHAPTER 33.1-14-01
DEFINITIONS

Section

<u>33.1-14-01-01</u>	<u>Definitions</u>
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33.1-14-01-01. Definitions.

As used in this article:

1. "Alteration" means a change in an item described on an original manufacturer's data report which affects the pressure retaining capability of the pressure retaining item. An alteration includes nonphysical changes, such as an increase in the maximum allowable internal or external working pressure, an increase in design temperature, or a reduction in minimum temperature. For boilers used in the power generation industry exceeding one hundred thousand pounds of steam per hour output, increases in steaming capacity may not be considered an alteration if a new baseline steaming capacity is established based on either an engineering evaluation or a review of the operating history and a conditional assessment of the boiler and its components. An engineering evaluation or conditional assessment must be made by the boiler owner with review and comment by the authorized inspection agency responsible for the in-service inspection of the boiler. Engineering evaluations and conditional assessments are subject to the review and approval of the chief boiler inspector.
2. "Apartments" means all multiple dwellings, including condominiums.

3. "Approved" means approved by the director.
4. "A.S.M.E. code" means the boiler and pressure vessel construction code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1, 2, and 3), IX, and X, 2019 edition, are hereby adopted by the director and incorporated by reference as a part of this article. A copy of the American Society of Mechanical Engineers Code is on file at the office of the boiler inspection program. The American Society of Mechanical Engineers Code may be obtained from the American Society of Mechanical Engineers headquarters at 2 Park Avenue, New York, New York 10016-5990 or from www.asme.org.
5. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves, as provided under North Dakota Century Code section 23.1-16-01.1.
6. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate may be issued under North Dakota Century Code section 23.1-16-10.
7. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
8. "Chief inspector" means the chief boiler inspector appointed by the director to serve in the capacity as stated by law.
9. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.
10. "Deputy inspector" means a boiler inspector or inspectors employed by the director to assist the chief inspector in making inspections of boilers.
11. "Director" means the director of the department of environmental quality.
12. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.
13. "External inspection" means an inspection made when a boiler is in operation.
14. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermic welding is also classed as fusion.
15. "High-pressure, high-temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it must be deemed the same as a power boiler.
16. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and includes all service-type and domestic-type water heaters not otherwise exempt by North Dakota Century Code section 23.1-16-06.
17. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.

18. "Internal inspection" means an inspection made when a boiler is shut down and handholes and manholes are opened for inspection of the interior.
19. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [103 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius] for water.
20. "Major repair" means a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in the National Board Inspection Code.
21. "Miniature boiler" means any boiler that does not exceed any of the following limits:
 - a. Sixteen inch [40.64 centimeter] inside diameter of shell.
 - b. Twenty square feet [1.86 square meter] heating surface.
 - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.
 - d. One hundred pounds per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
22. "National board" means the national board of boiler and pressure vessel inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American Society of Mechanical Engineers Code.
23. "National Board Inspection Code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The National Board Inspection Code, 2019 edition, is hereby adopted by the director and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 Crupper Avenue, Columbus, Ohio 43229.
24. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.
25. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamping, the American society of mechanical engineers stamp, or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
26. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler that is not specifically exempt under North Dakota Century Code section 23.1-16-06 within North Dakota.
27. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [103 kilopascals] by the direct application of heat.
28. "Reciprocal commission" means a commission issued by the director to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national board and are employed by an accredited national board owner/user inspection organization.
29. "Reinstalled boiler" means a boiler removed from its original setting and re-erected at the same location or erected at a new location without change of ownership.

30. "Reinstalled pressure vessel" means a pressure vessel removed from its original setting and re-erected at the same location or erected at a new location without change of ownership.
31. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.
32. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.
33. "Secondhand pressure vessel" means a pressure vessel of which both the location and ownership have been changed after primary use.
34. "Service-type or domestic-type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used exclusively for domestic or sanitary purposes, with temperatures not exceeding two hundred ten degrees Fahrenheit [98.68 degrees Celsius], and a heat input not in excess of two hundred thousand British thermal units [2.11 x 10 to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].
35. "Special inspector" means an inspector regularly employed by an accredited national board authorized inspection agency or an inspector who has passed the national board examination and is employed by an accredited national board owner/user inspection organization.
36. "Standard boiler" means a boiler that bears the stamp of North Dakota or of another state that has adopted a standard of construction equivalent to that required by this article or a boiler that bears the national board stamping or American society of mechanical engineers stamp.
37. "State of North Dakota boiler construction code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article must be considered the same as the American society of mechanical engineers code.
38. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-02 **ADMINISTRATION**

Section

- 33.1-14-02-01 Inspection Reports to Be Submitted
- 33.1-14-02-02 Insurance Companies and Other Authorized Inspection Agencies to Notify the Chief Inspector of New, Canceled, or Suspended Risks
- 33.1-14-02-03 Insurance Companies and Other Authorized Inspection Agencies to Notify the Chief Inspector of Defective Boilers and Boiler Accidents
- 33.1-14-02-04 Owner/User Inspection Organizations Making Own Inspections
- 33.1-14-02-05 Defective Conditions Disclosed at Time of External Inspections
- 33.1-14-02-06 Owner or User to Notify the Chief Inspector in Case of Accident
- 33.1-14-02-07 Operating Without a Certificate of Inspection
- 33.1-14-02-08 Validity of Inspection Certificate for Boilers
- 33.1-14-02-09 Restamping Boilers
- 33.1-14-02-10 Condemned Boilers and Condemned Pressure Vessels
- 33.1-14-02-11 Owner and Installer to Notify Chief Boiler Inspector of Boilers to be Installed in North Dakota or Brought Into North Dakota for Temporary Use
- 33.1-14-02-12 Owner to Notify the Chief Boiler Inspector of Businesses Closed or Reopened
- 33.1-14-02-13 Removal of Used Boilers from the State
- 33.1-14-02-14 Nonstandard Boilers
- 33.1-14-02-15 Installing Used or Secondhand Boilers
- 33.1-14-02-16 Reinstalled Boilers
- 33.1-14-02-17 Reporting Repairs to be Made
- 33.1-14-02-18 Reports of Welded Repair or Alterations
- 33.1-14-02-19 Stamping of Boilers
- 33.1-14-02-20 Welders' Requirements
- 33.1-14-02-21 Alterations to Boilers
- 33.1-14-02-22 Major Repairs to Boilers

33.1-14-02-01. Inspection reports to be submitted.

1. **Power boilers.** Each authorized inspection agency or owner/user inspection organization, to which a special inspector commission has been issued, shall submit to the chief boiler inspector complete data of each high-pressure boiler insured or inspected by it or covered by a written inspection agreement. A complete report of each boiler inspection must be filed electronically with the chief boiler inspector on form SFN 10706 within fifteen days of inspection.
2. **Low pressure, hot water heating, and hot water supply boilers.** Each authorized inspection agency or owner/user inspection organization shall submit to the chief boiler inspector complete data of each boiler insured or inspected by it or covered by a written inspection agreement. A complete report of each boiler inspection must be filed electronically with the chief boiler inspector on form SFN 10706 within fifteen days of inspection.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-02. Insurance companies and other authorized inspection agencies to notify the chief inspector of new, canceled, or suspended risks.

Each insurance company or other authorized inspection agency shall notify the chief inspector within thirty days of each boiler insured, covered by a written inspection agreement, canceled, not renewed, or suspended because of unsafe conditions.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-03. Insurance companies and other authorized inspection agencies to notify the chief inspector of defective boilers and boiler accidents.

If a special inspector, upon the first inspection of a boiler, finds that the boiler or any of the appurtenances are in such condition that the inspector's company refuses insurance or the boiler does not comply with the provisions of this article, the company shall submit a report of the defects to the chief inspector. When an accident occurs to an insured boiler or to a boiler covered by a written inspection agreement which requires major repairs as defined in subsection 20 of section 33.1-14-01-01, or which results in the boiler being removed from service, that accident must be reported to the chief boiler inspector within thirty days of the insuring or inspecting company first becoming aware of the accident.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-04. Owner/user inspection organizations making own inspections.

The chief inspector is not required to inspect boilers in any establishment owned and operated by an owner/user inspection organization provided an annual boiler inspection program is established and maintained by such organization and all boilers and appurtenances are constructed, installed, operated, and repaired in accordance with the provisions of this article. When boilers are inspected by an employee of an owner/user inspection organization, such inspector must hold a certificate of competency or a commission issued by North Dakota or a state that has adopted the American Society of Mechanical Engineers Code. A complete report of each boiler inspection must be filed electronically with the chief inspector on form SFN 10706 within fifteen days of inspection.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-05. Defective conditions disclosed at time of external inspections.

If upon an external inspection there is evidence of a leak or crack, enough of the covering of the boiler must be removed to satisfy the inspector, in order that the inspector may determine the safety of the boiler. If the covering cannot be removed at that time, the inspector may order the operation of the boiler stopped until the covering can be removed and proper examination can be made.

History: July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-06. Owner or user to notify the chief inspector in case of accident.

When an accident occurs which requires major repairs as defined in subsection 20 of section 33.1-14-01-01, the owner or user immediately shall notify the chief inspector and submit a detailed

report of the accident. In case of an explosion, notice must be given immediately by telephone or electronically and the parts of the boiler may not be removed or disturbed before an inspection has been made by an inspector, unless for the purpose of saving human life or property.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-07. Operating without a certificate of inspection.

The owner or user who causes a boiler to be operated after inspections without possessing a valid certificate of inspection is subject to the penalty under North Dakota Century Code section 23.1-16-11.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-08. Validity of inspection certificate for boilers.

1. A certificate of inspection, issued in accordance with this article, is valid until expiration unless some defect or condition affecting the safety of the boiler is disclosed and if all inspection fees have been paid. A certificate of inspection is valid for the following time periods:

a. Thirty-six months for power boilers over one hundred thousand pounds [45359.24 kilograms] of steam per hour as allowed by North Dakota Century Code section 23.1-16-07.

b. Twelve months for steam traction engines.

c. Twelve months for all other power boilers.

d. Thirty-six months for hot water heating and hot water supply boilers.

e. Twenty-four months for low-pressure steam boilers.

2. A certificate issued for a boiler inspected by a special inspector is valid only if the boiler for which it was issued continues to be insured by a duly authorized insurance company, covered by a written inspection agreement with an authorized inspection agency, or inspected by an accredited owner/user inspection organization. A two-month grace period must be extended for any certificate.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-09. Restamping boilers.

When the stamping on a boiler becomes indistinct, the inspector shall instruct the owner or user to have it restamped. Request for permission to restamp the boiler must be made to the chief inspector and proof of the original stamping must accompany the request before authorization by the chief inspector. Restamping authorized by the chief inspector may be done only by an inspector, and must be identical with the original stamping, except that it is not required to restamp the American Society of Mechanical Engineers Code symbol. Notice of completion of such restamping must be filed with the chief inspector by the inspector who stamped the boiler or pressure vessel, together with a facsimile of the stamping.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-10. Condemned boilers and condemned pressure vessels.

Any boiler having been inspected and declared unsafe by the chief inspector or the inspector's deputy must be stamped by the inspector with the letter X and the letters ND as shown on the following facsimile that will be designated a condemned boiler: XX ND XX.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-11. Owner and installer to notify chief boiler inspector of boilers to be installed in North Dakota or brought into North Dakota for temporary use.

1. The owner shall notify the chief boiler inspector before any new or secondhand boiler may be operated in North Dakota, giving its location and operating pressure.
2. The installer shall notify the chief boiler inspector before any new or secondhand boiler may be installed in North Dakota, giving its location and operating pressure.
3. The owner shall notify the chief boiler inspector of boilers removed from location, junked, or sold.
4. The owner shall notify the chief boiler inspector within fifteen days of removing a boiler from its location as to whether it has been junked or sold. If it has been sold, the name and address of the purchaser must be given.
5. When a boiler is brought into the state on a temporary basis and is to be removed from the state, a notice must be given as to the date it will be removed from North Dakota.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-12. Owner to notify the chief boiler inspector of businesses closed or reopened.

1. It is the responsibility of the owner of a building complex or owner of a boiler to notify the chief boiler inspector of plans to discontinue use of a boiler due to business being permanently closed.
2. If a business is destroyed by fire, flood, or windstorm, the owner shall notify the chief boiler inspector as to plans developed for the disposition of the boiler.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-13. Removal of used boilers from the state.

When a nonportable standard boiler located in this state is moved to another state for use or repair, the owner shall apply to the chief boiler inspector before the boiler may be reinstalled in North Dakota.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-14. Nonstandard boilers.

A nonstandard boiler used in this state, if moved outside of the state, may not be reinstalled in this state without permission of the chief boiler inspector.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-15. Installing used or secondhand boilers.

Before a used or secondhand boiler may be installed in this state, an inspection must be made by an inspector. (Note: It is recommended that before a used or secondhand boiler is shipped for installation or operation in this state, that it be inspected by a North Dakota inspector, or by a national board commissioned inspector, and data submitted by the inspector filed by the buyer or owner or user with the chief boiler inspector for the chief inspector's approval. Otherwise hardships may be encountered should the boiler be condemned after installation.)

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-16. Reinstalled boilers.

When a stationary boiler is moved and reinstalled, the fittings and appliances must comply with all requirements for new installations.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-17. Reporting repairs to be made.

1. The owner or person in charge of a boiler repair shop making major repairs to a boiler shall notify the chief boiler inspector of each major repair or alteration to be made to a boiler, and the anticipated repair must be approved before work is started; or
2. If the boiler is insured, covered by a written inspection agreement with an authorized inspection agency, or owned by an owner/user inspection organization, the special inspector may authorize the repair. After such repairs are made, the repairs are subject to the approval of an inspector.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-18. Reports of welded repair or alterations.

1. All alterations and major repairs made to boilers in North Dakota must be reported on the appropriate national board form. The completed form must be sent to the chief boiler inspector by the repair concern effecting the repair or alteration within thirty days of the completion of the repair or alteration.
2. Subject to the administrative procedures of the boiler inspection program and the approval of the inspector, repairs of a routine nature may be given prior approval and the requirement for the repair stamping may be waived. The National Board Inspection Code must be used as a guideline in determining repairs of a routine nature.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-19. Stamping of boilers.

1. Every boiler built for use in North Dakota must conform in every detail to the boiler laws and rules of North Dakota. When correctly constructed in accordance with these laws and rules the boiler must be stamped with a state stamp of North Dakota and assigned a state number.
2. A boiler may not be operated in North Dakota unless it is stamped with the American society of mechanical engineers stamp and registered with the national board or can qualify for a North Dakota stamp. A request for a North Dakota stamp must be accompanied by a manufacturer's data report with supporting evidence that the boiler meets all requirements of the laws of North Dakota.
3. Upon completion of the installation, all boilers must be inspected by an inspector. Initial certificate inspections may only be made by the chief inspector or deputy inspectors. At the time of this inspection, each boiler must be stamped with a serial number of North Dakota preceded by the letters N.D. The letters and figures may not be less than five-sixteenths inch [7.94 millimeters] in height. If construction does not permit stamping, a numbered metal tag must be attached in a conspicuous place. The stamping may not be concealed by lagging or paint and must be exposed at all times.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-20. Welders' requirements.

1. Any person welding on new or existing boilers shall register with the chief boiler inspector sufficient data to show a satisfactory performance qualification test for American society of mechanical engineers position "6G" or equivalent. This data must be documented on a current American society of mechanical engineers section IX "QW-484" form. Tests of welded specimens must be made by a certified testing laboratory.
2. In lieu of the above requirements, a firm in possession of a valid American society of mechanical engineers certificate of authorization for new boiler construction or a valid national board "R" certificate of authorization for repairing or altering existing boilers may allow welder's qualifications to be audited by the chief boiler inspector at the chief boiler inspector's discretion. The welders must be qualified according to the requirements of American Society of Mechanical Engineers Boiler and Pressure Vessel Code, section IX.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-21. Alterations to boilers.

Alterations, as defined in this article, must be made by a firm in possession of a valid national board "R" certificate of authorization, with alterations included within its scope of activity.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-02-22. Major repairs to boilers.

Major repairs, as defined in this article, must be made by:

1. A firm in possession of a valid national board "R" certificate of authorization for the type of vessel to be repaired; or
2. A firm authorized by the director to do repairs to boilers. Such authorization may be issued only upon a successful review of that firm's repair capabilities by the chief inspector. Such a review must be based on the National Board Inspection Code and must be made on a frequency determined by the chief inspector. Such authorization may be revoked or not renewed by the chief inspector for cause.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

**CHAPTER 33.1-14-03
GENERAL REQUIREMENTS**

Section

- 33.1-14-03-01 Inspection of Boilers
- 33.1-14-03-01.1 Boiler Inspection Fees
- 33.1-14-03-02 Preparation for Internal Inspection
- 33.1-14-03-03 Boiler Improperly Prepared for Inspection
- 33.1-14-03-04 Removal of Covering to Permit Inspection
- 33.1-14-03-05 Lap Seam Crack
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- 33.1-14-03-07 Automatic Low-Water Fuel Cutoff or Water-Feeding Device
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- 33.1-14-03-23 Shop Inspection - Manufacturing - Repairs - Alterations
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- 33.1-14-03-26 Inspection of Boilers
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33.1-14-03-01. Inspection of boilers.

The owner or user shall prepare a boiler subject to regular inspections for such inspections or hydrostatic tests when notified by the inspector. The owner or user shall prepare each boiler for internal inspection and shall prepare for and apply the hydrostatic test whenever necessary, on the date specified by the inspector, which may not be less than seven days after the date of notification.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-01.1. Boiler inspection fees.

The following will be charged for boiler inspections:

- 1. High pressure boilers.
 - a. Internal inspections. Fee
 - : 50 square feet [4.65 square meters] or less of heating surface \$90.00

- Over 50 square feet [4.65 square meters] and not over 500 square feet [46.45 square meters] \$110.00
- Over 500 square feet [46.45 square meters] and not over 4,000 square feet [371.61 square meters] \$130.00
- Over 4,000 square feet [371.61 square meters] of heating surface \$160.00

b. External inspections.

- 50 square feet [4.65 square meters] of heating surface or less; 100 KW or less \$70.00
- Over 50 square feet [4.65 square meters] of heating surface; over 100 KW \$90.00

c. Portable oilfield boilers. Internal and external inspections of portable oilfield boilers must be charged inspection fees of seventy-five dollars per hour, including travel time, plus expenses for meals, mileage, and lodging at current state rates.

2. Low pressure boilers.

a. Internal inspections.

- Without manway \$85.00
- With manway \$95.00

b. External inspections.

- Hot water heat and low-pressure steam \$60.00
- Hot water supply \$45.00

3. Steam traction engines.

- Internal \$70.00
- External \$65.00
- Hydrostatic test \$80.00
- Ultrasonic survey, per hour \$50.00

4. Certificate fee, per certificate as required by North Dakota Century Code section 23.1-16-10 \$20.00, per year of certificate issued

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-02. Preparation for internal inspection.

The owner or user shall prepare a boiler for internal inspection in the following manner:

1. Water must be drawn off and the boiler thoroughly washed.

2. All manholes and handhole plates, washout plugs, and plugs in water column connections must be removed, the furnace and combustion chambers thoroughly cooled and cleaned, at the discretion of the inspector.
3. All grates of internally fired boilers must be removed, at the discretion of the inspector.
4. At each annual inspection, brickwork must be removed as required by the inspector in order to determine the condition of the boiler, headers, furnace, supports, or other parts.
5. The steam gauge must be removed for testing, at the discretion of the inspector.
6. Any leakage of steam or hot water into the boiler must be cut off by disconnecting the pipe or valve at the most convenient point.
7. Any low-water fuel cutoff float chamber must be opened and cleaned.
8. Safety concerns such as asbestos and confined space entry must be addressed by the owner to provide for the safety of the inspector. Applicable state or federal regulations must be used to decide if safety measures must be taken.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-03. Boiler improperly prepared for inspection.

If a boiler has not been properly prepared for an internal inspection or the owner or user fails to comply with the requirements for hydrostatic test as set forth in this article, the inspector may decline to make the inspection or test and withhold the certificate of inspection until the owner or user complies with the requirements.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-04. Removal of covering to permit inspection.

If the boiler is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, enough of the jacketing, setting wall, or other form of casing or housing must be removed, at the discretion of the inspector, so that the size of the rivets, pitch of the rivets, and other data necessary to determine the safety of the boiler may be obtained, provided such information cannot be determined by other means.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-05. Lap seam crack.

The shell or drum of a boiler in which a lap seam crack is discovered along a longitudinal riveted joint must be immediately discontinued from use. If the boiler is not more than fifteen years of age, a complete new course of the original thickness may be installed at the discretion of the chief inspector. Patching is prohibited. "Lap seam crack" means the typical crack frequently found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-06. Hydrostatic pressure tests.

A hydrostatic pressure test, when applied to boilers of riveted or welded construction, except locomotive boilers, may not exceed one and one-half times the maximum allowable working pressure. Hydrostatic pressure applied to locomotive boilers may not exceed one and one-quarter times the maximum allowable working pressure. During the hydrostatic pressure test, the safety valve or valves must be removed, or each valve disk must be held down by means of a testing clamp and not by applying the additional load to the spring with the compression screw. The minimum temperature of the water used to apply a hydrostatic test must not be less than sixty degrees Fahrenheit [15.6 degrees Celsius], nor shall it exceed one hundred twenty degrees Fahrenheit [49.3 degrees Celsius]. (Note: For all cases involving the question of tightness, the pressure may be equal to the release pressure of the safety valve or valves having the lowest release setting.)

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-07. Automatic low-water fuel cutoff or water-feeding device.

1. Each automatically fired steam or vapor system boiler must be equipped with an automatic low-water cutoff located to automatically cut off the fuel supply when the surface of the water falls to the lowest safe waterline. For other than electric and miniature boilers, each automatically fired steam or vapor system boiler must be equipped with at least two low-water fuel cutoffs, one of which must be readily testable. One low-water fuel cutoff must be set to function ahead of the other. Functioning of the lower of the controls shall cause safety shutdown and lockout. The manual reset may be incorporated into the lower cutoff control. Where a reset device is separate from the low-water fuel cutoff, a means shall be provided to indicate actuation of the low-water fuel cutoff. The manual reset device may be of the instantaneous type or may include a time delay of not more than three minutes after the fuel has been cut off. A system may incorporate a time delay component with the low-water fuel cutoff device to prevent short cycling. A time delay must not exceed the manufacturer's recommended timing, or ninety seconds, whichever is less. A high-pressure boiler regularly attended by a full-time operator is not considered as automatically fired, and is not required to be equipped with low-water fuel cutoffs. For other than electric boilers, the primary low-water fuel cutoff for low pressure steam boilers must be a float type that can be readily tested.
2. If a water-feeding device is installed, it must be constructed so that the water inlet valve cannot feed water into the boiler through the float chamber and located to supply requisite feedwater. The lowest safe waterline should not be lower than the lowest visible part of the water glass.
3. Such fuel or feedwater control device may be attached directly to a boiler or to the tapped openings provided for attaching a water glass directly to a boiler, provided that for low pressure boilers such connections from the boiler are nonferrous tees or Ys not less than one-half-inch [12.7 millimeter] pipe size between the boiler and the water glass, so that the water glass is attached directly and as close as possible to the boiler; the straight tapping of the Y or tee to take the water glass fittings, and the side outlet of the Y or tee to take the fuel cutoff or water-feeding device. The ends of all nipples must be reamed to full-size diameter.
4. Designs embodying a float and float bowl must have a vertical straight drainpipe at the lowest point in the water equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested. This drainpipe and connections must be not less than national pipe standard (NPS) three-quarters inch.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-08. Safety appliances.

1. A person may not remove, tamper with, or render inoperative any safety appliances prescribed by these rules except for the purpose of making repairs. The resetting of safety appliances may not exceed the accepted working pressure of the unit.
2. Repairs or adjustments made to safety or safety relief valves must be done by the manufacturer of the valve or an approved testing facility equipped to do such repairs or adjustments. The resetting of safety valves or safety relief valves may not exceed the accepted working pressure for the unit.
3. An approved testing facility must be one of the following:
 - a. A facility holding a valid certificate of authorization and "VR" symbol stamp issued by the national board of boiler and pressure vessel inspectors.
 - b. An owner or user program for doing adjustments to set pressure or blowdown, or both, to boiler pressure relief valves owned by them, provided the adjusted settings or capacities, or both, and the date of the adjustments are recorded on a metal tag secured to the seal wire. All external adjustments must be sealed showing the identification of the organization making the adjustments. The chief boiler inspector shall review the training, qualifications, and procedures used to implement this program.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-09. Blowoff tanks.

1. Blowoff piping from a boiler may not discharge directly into a sewer. A blowoff tank, constructed to the provisions of section VIII of the American Society of Mechanical Engineers Code, must be used where conditions do not provide an adequate and safe open discharge.
2. Blowoff tanks hereinafter installed, if of metal, must be designed for a minimum working pressure of fifty pounds per square inch [344.74 kilopascals].
3. The outlet from the blowoff tank must be twice the area of the inlet pipe and made to extend internally within eight inches [203.2 millimeters] from the bottom of the tank.
4. Vent pipe at least four times the area of the inlet pipe must lead to the outer atmosphere.
5. Vents must be as direct as possible to the outer air and discharge at a safe location. There may be no valve or other possible obstructions such as water pockets between the tank and the discharge end of the vent pipe.
6. All pipe connections between the tank and the boiler must be as direct as possible and must conform to the American Society of Mechanical Engineers Code.
7. For convenience in cleaning the tank, a manhole or an access opening must be provided.
8. If a blowoff tank is not vented as specified above, it must be constructed for a pressure equal to that allowed on the boiler to which it is attached or must be equipped with a safety valve or valves of sufficient capacity to prevent the pressure from exceeding the safe working pressure of the tank.

9. Boiler blowoff systems constructed in accordance with the national board rules and recommendations for the design and construction of boiler blowoff systems must be considered as complying with this section.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-10. Blowoff piping.

1. The construction of the setting must be done in such a manner that it does not restrict the movement of the blowoff piping.
2. All blowoff piping, when exposed to furnace heat, must be protected by firebrick or other heat-resisting material so constructed that the piping may be readily inspected.
3. Each boiler must have a blowoff pipe, fitted with a valve cock, in direct connection with the lowest water space. Cocks must be of the gland or guard type and suitable for the pressure allowed. The use of globe-type valves is not permitted unless complying with the American Society of Mechanical Engineers Code. When the maximum allowable working pressure exceeds one hundred pounds per square inch gauge [689.48 kilopascals] each blowoff pipe must be provided with two valves or a valve and a cock, such valves and cocks to be of the extra heavy type.
4. When the maximum allowable working pressure exceeds one hundred pounds per square inch gauge [689.48 kilopascals], blowoff piping must be extra heavy from the boiler to the valve or valves and must be run full size without use of reducers or bushings. The piping must be at least extra heavy duty wrought iron or steel and may not be galvanized.
5. All fittings between the boiler and blowoff valve must be steel or extra heavy fittings of malleable iron. In case of renewal of blowoff pipe or fittings, they must be installed in accordance with the rules and regulations for new installations.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-11. Location of blowoffs and vents.

The discharge of safety valves, blowoff pipes, and other outlets must be located so as to prevent injury to personnel. For high pressure boilers, vents from blowoff tanks, condensate tanks, and the discharge piping from safety valves must be as short and straight as possible and so arranged as to avoid undue stresses on the safety valve or valves. Safety valve discharge piping must be so designed and constructed as to prevent excessive back pressure, while not affecting safety valve capacity and performance.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-12. Underground installations.

Where necessary to install a blowoff tank underground, it must be enclosed in a concrete or brick pit with a removable cover so that inspection of the entire shell and heads of the tank can be made.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-13. Supports.

Each boiler must be supported by masonry or structural supports of sufficient strength and rigidity to safely support the boiler and its contents. There must be a minimum of vibration in the boiler and its connecting piping.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-14. Pressure reducing valves.

1. Where pressure reducing valves are used, one or more relief or safety valves must be provided on the low-pressure side of the reducing valve in case the piping or equipment on the low-pressure side does not meet the requirements for the full initial pressure. The relief or safety valves must be located adjoining or as close as possible to the reducing valve. Proper protection must be provided to prevent injury or damage caused by the escaping steam from the discharge. Capacity of the relief valves must be such that the pressure rating of the lower pressure piping or equipment shall not be exceeded in case the reducing valve sticks open.
2. The use of hand-controlled bypasses around reducing valves is permissible. The bypass if used around a reducing valve may not be greater in capacity than the reducing valve unless the piping or equipment is adequately protected by relief valves or meets the requirements of the high-pressure system.
3. A pressure gauge must be installed on the low-pressure side of a reducing valve.
4. All low-pressure headers and their outlets must be protected by a safety valve or valves whose combined capacity is equivalent to the total amount of steam that can pass from the high-pressure system to the lower pressure system.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-15. Ladders and runways.

To ensure safe access to batteries of boilers, a steel platform or runway at least eighteen inches [457.2 millimeters] in width must be provided, complete with standard railing and toe boards on either side, across the tops of adjacent boilers. Wherever arrangement and location permit, all runways must provide for two means of egress remotely located with respect to the other and connected to a permanent stairway or fixed ladder leading to the floor level. The inspector shall notify the chief inspector of the owners or users who shall provide for these requirements and the chief inspector shall give written notice to the owner or user that the installation be made.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-16. Boiler logs.

A log must be kept as to all repairs made, unusual incidents, accidents, water tests, amounts, types, and dates of water treatment. Logs for hobby boilers also must include operating hours, operators, fusible plug installation dates, safety valve tests, and apprentice operator training data.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-17. Major repairs and alterations.

If a major repair or alteration is necessary, an inspector must be called for consultation and advice as to the best method of making such repair or alteration. After such repair or alteration is made, it is subject to the approval of the inspector.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-18. Same material to be used.

1. No repair to any boiler or steam pipe nor any of the connections thereto may be approved which is made in whole or in part of unsuitable material or is unsafe from any cause. Nothing herein may be construed to prevent the use of any boiler constructed of riveted iron or steel plates when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers constructed of the best quality of materials.
2. Quality of the material used in boiler construction and repair demands critical attention because in performing its function a steam boiler is continually subjected to disruptive stresses. These are due to high internal pressures and to changes in temperature. Disastrous consequences will inevitably follow if the material fails under these stresses.
3. The quality of the material used in the different parts of a boiler should be selected with special reference to the stresses and disruptive influences which each part encounters in service.
4. Galvanized pipe may not be used on any boiler or boiler system subject to this article, as this may cause deterioration of the boiler.
5. Sweated or soldered copper joints may not be used in steam piping and connections.
6. Repair material having a lesser tensile strength than that used in the original construction may not be used.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-19. Repairs to boilers.

1. Rejection of repair. Any riveted or welded repair made to a boiler in North Dakota which does not meet this article's requirements will be cause for rejection of the repair by an inspector.
2. Rejection of welds. Any weld found to contain heavy slag inclusions or to be porous or found to be cracked is reason for rejection of the weld and either part or all the weld must be removed by grinding or chipping and the weld must be replaced.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-20. Removal of safety appliances.

1. A person may not attempt to remove or do any work upon a safety appliance, prescribed by these rules, while a boiler is in operation. If any of these safety appliances are repaired during an outage of a boiler, they must be reinstalled and in proper working order before the object is again placed in service. This provision does not apply to the removal and replacement of a gauge glass.
2. A person may not in any manner load the safety valve or valves to maintain a working pressure in excess of that stated on the certificate of inspection.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-21. Repairs and renewals of boiler fittings and appliances.

Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, the work must comply with all requirements for new installations.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-22. Return pump.

Each condensate return pump where practicable must be provided with an automatic water level control set to maintain the water level within the limits of two gauge cocks.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-23. Shop inspection - Manufacturing - Repairs - Alterations.

Any boiler or pressure vessel being constructed, repaired, or altered in North Dakota must be inspected by an inspector holding a North Dakota reciprocal commission and a national board commission. The boiler inspection program may function as an authorized inspection agency. The boiler inspection program may cooperate with the national board and American society of mechanical engineers in making shop reviews and audits.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-24. Director to arrange for examinations.

The director shall cause examinations to be conducted at such times as is necessary for the qualification of inspectors.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-25. Conditions not covered by this article.

1. In any conditions not covered by this article, the American Society of Mechanical Engineers Code for new installations applies.

2. If any section, subsection, sentence, clause, phrase, provision, or exemption of this article is declared unconstitutional or invalid for any reason, such invalidity does not affect the remaining portion of this article.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-26. Inspection of boilers.

1. Each boiler used or proposed to be used within this state, except boilers exempt in North Dakota Century Code section 23.1-16-06, must be thoroughly inspected as to their construction, installation, condition, and operation as follows:
- a. Power boilers must be inspected annually both internally while not under pressure and externally while under pressure. However, any power boiler or steam generator, the operation of which is an integral part of or a necessary adjunct to other continuous processing operations, must be inspected internally at such intervals as are permitted by the shutting down of the processing operation. The chief boiler inspector may provide for extension of time between internal inspections, but an external inspection must be made, and report submitted, for purposes of issuing a certificate. In all other instances the certificate inspection must be an internal inspection when construction permits.
 - b. Power boilers of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, which comply with subsection 2 of North Dakota Century Code section 23.1-16-07, must be inspected at least once every thirty-six months internally while not under pressure and at least once every twelve months externally while under pressure.
 - c. Steam traction engines must be inspected at least once every twelve months. Inspections must alternate between internal inspections, external inspections, and hydrostatic tests.
 - d. Low-pressure steam boilers must be inspected annually. Low-pressure steam boilers of steel construction must be inspected alternately internally and externally. The issuance of a certificate must normally be based on the internal inspection.
 - e. Hot water heating and hot water supply boilers must be inspected triennially unless they are located in a nursing home, school, hospital, nursery school, or kindergarten, in which case they must be inspected annually. Internal inspections will be required when deemed necessary by the inspector.
 - f. A grace period of two months beyond the period specified in the above subdivisions may elapse between inspections.
2. Certificate inspections must be made during the period of thirty days prior to and thirty days after the expiration date of the certificate. Noncertificate inspections, when required by the provisions of this section, must be made between certificate inspections. The chief boiler inspector encourages reports to be made at any time adverse conditions are found, or when difficulty is encountered getting cooperation from the owner or user.
3. The inspections required under this section must be made by the chief boiler inspector, or by a deputy inspector, or by a special inspector provided for in this article.
4. If at any time a hydrostatic test is deemed necessary by the inspector, it must be made by the owner or user in the presence of, and under the supervision of the inspector, and must be approved by the inspector.

5. Cast iron boilers must be considered as boilers that do not lend themselves to internal inspections. Internal inspections of electric boilers must be made when deemed necessary by the inspector.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-27. Steam traction engines.

All steam traction engines must conform to at least one of the following: chapter 33.1-14-04, 33.1-14-05, 33.1-14-06, or 33.1-14-07.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-03-28. Safety valves.

1. Boiler safety valves and safety relief valves must be placed on, or as close as physically possible, to the boiler proper.
2. Safety valves or safety relief valves may not be placed on the feedline except when installed to provide control for feedwater pressure or to protect a feed pump against overpressure.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-04

POWER BOILERS - NEW INSTALLATIONS

Section

- 33.1-14-04-01 Requirements
- 33.1-14-04-02 Appurtenances - Piping and Tests
- 33.1-14-04-03 Exits from Boiler Rooms
- 33.1-14-04-04 Boiler Clearances
- 33.1-14-04-05 Carbon Monoxide Detector or Alarm
- 33.1-14-04-06 Safety Valve Capacity

33.1-14-04-01. Requirements.

1. All new boilers, except those exempt by law, to be installed in North Dakota must be reported to the chief boiler inspector by the owner or user and by the installer.
2. After July 1, 1973, power boilers that are not exempt by law may not be installed in this state unless they have been constructed, inspected, and stamped in conformity with the applicable edition of the American Society of Mechanical Engineers Code for power boilers and are approved, registered, and inspected in accordance with the requirements of this article.
3. A boiler having the standard stamping of another state or province of Canada that has adopted a standard of construction equivalent to the standard of North Dakota may be accepted by the chief boiler inspector if the person desiring to install the boiler makes application for the installation and files with the application the manufacturer's data report covering the construction of the boiler.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-04-02. Appurtenances - Piping and tests.

1. The inspector shall inspect all boilers and connected appurtenances for their safe operation and all pressure piping connecting them to the appurtenances and all piping up to and including the first stop valve, or the second stop valve when two are required.
2. Any pressure piping to the boiler, such as water column, blowoff valve, feedwater regulator, superheater, economizer, stop valves, etc., which are shipped connected to the boiler as a unit, must be hydrostatically tested with the boiler and witnessed by an inspector.
3. All economizers, whether separately fired or not, and when located within the scope of boiler external piping, must be constructed to section I of the American Society of Mechanical Engineers Code. All superheaters must be constructed to section I of the American Society of Mechanical Engineers Code.
4. The chief boiler inspector may waive American society of mechanical engineers section I boiler external piping requirements for new and secondhand boilers of less than forty horsepower output if the boiler external piping is mechanically installed (i.e., no welding), the piping does not exceed two inch [5.08 centimeters] national pipe standard in size, the piping is schedule eighty minimum, and the boiler maximum allowable working pressure does not exceed one hundred fifty pounds per square inch [1034.22 kilopascals] gauge.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-04-03. Exits from boiler rooms.

1. To lessen the hazard of being trapped within the boiler room, ash pit aisles, or other locations, there must be at least two means of exit as may be considered necessary by the inspector. Each elevation must be provided with at least two means of egress, each to be remotely located from the other.
2. All inspectors shall notify the chief inspector of the owners or users who must provide for these requirements. The chief inspector shall then give written notice to the owner or user that the necessary work must be completed within six months from the date of notification.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-04-04. Boiler clearances.

1. All new boiler installations must be designed to allow for normal operation, cleaning, and inspections, and must have at least three feet [.91 meters] of clearance on each side of the boiler with no obstructions and boilers operated in battery may not be installed closer than four feet [1.22 meters] from each other.
2. All boilers must be installed to allow for removal of tubes without removing walls or other structures. The front or rear of any boiler may not be located any nearer than three feet [.91 meters] from any wall or structure.
3. On all boilers equipped with a manhole, at least seven feet [2.1336 meters] of clearance must be maintained from the top of the boiler manhole to the ceiling of the boiler room.
4. Boilers without manholes must have a minimum of at least three feet [.91 meters] from the top of the boiler to the lowest point of the boiler room ceiling.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-04-05. Carbon monoxide detector or alarm.

The owner or user shall install a carbon monoxide detector or alarm in equipment rooms where fuel fired boilers or fuel fired pressure vessels, or both are located in accordance with the authority having jurisdiction.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-04-06. Safety valve capacity.

The minimum required relieving capacity of safety valves or safety relief valves for all types of boilers may not be less than the maximum designed steaming capacity as determined by the manufacturer and must be based on the capacity of all the fuel burning equipment as limited by other boiler functions.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-05
POWER BOILERS - EXISTING INSTALLATIONS

Section

<u>33.1-14-05-01</u>	<u>Maximum Allowable Working Pressure for Standard Boilers</u>
<u>33.1-14-05-02</u>	<u>Maximum Allowable Working Pressure for Nonstandard Boilers</u>
<u>33.1-14-05-03</u>	<u>Age Limit of Existing Boilers</u>
<u>33.1-14-05-04</u>	<u>Welded Boilers</u>
<u>33.1-14-05-05</u>	<u>Pressure on Old Boilers</u>
<u>33.1-14-05-06</u>	<u>Cast Iron Headers and Mud Drums</u>
<u>33.1-14-05-07</u>	<u>Pressure on Cast Iron Boilers</u>
<u>33.1-14-05-08</u>	<u>Safety Valves and Safety Relief Valves</u>
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<u>33.1-14-05-12</u>	<u>Operation</u>
<u>33.1-14-05-13</u>	<u>Steam Stop Valves</u>
<u>33.1-14-05-14</u>	<u>Feedwater Valves and Piping</u>
<u>33.1-14-05-15</u>	<u>Blowoff Valves and Piping</u>
<u>33.1-14-05-16</u>	<u>Factors of Safety</u>
<u>33.1-14-05-17</u>	<u>Inspection of Inaccessible Parts</u>
<u>33.1-14-05-18</u>	<u>Repairs and Renewals of Fittings and Appliances</u>
<u>33.1-14-05-19</u>	<u>Fusible Plugs</u>
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<u>33.1-14-05-21</u>	<u>Steam Pressure Gauge</u>
<u>33.1-14-05-22</u>	<u>Pressure on Nonstandard Steam Traction Engines</u>
<u>33.1-14-05-23</u>	<u>Duties of Owners</u>
<u>33.1-14-05-24</u>	<u>Inspection and Repair of Standard and Nonstandard Steam Traction Engines</u>

33.1-14-05-01. Maximum allowable working pressure for standard boilers.

The maximum allowable working pressure for standard boilers must be determined in accordance with the applicable provisions of the edition of the American Society of Mechanical Engineers Code under which they were constructed and stamped.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-02. Maximum allowable working pressure for nonstandard boilers.

1. The maximum allowable working pressure on the shell of a nonstandard boiler must be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this article.

TStE = Maximum allowable working pressure, per square inch gauge where:
RFS

TS = Ultimate tensile strength of shell plates per square inch

t = Minimum thickness of shell plate, in weakest course, inches

E = Efficiency of longitudinal joint:

For tube ligaments and riveted construction, E shall be determined by the rules given in section I, part PR, of the American Society of Mechanical Engineers Code for power boilers. For seamless construction, E shall be considered one hundred percent.

R = Inside radius of the weakest course of the shell, in inches

FS = Factor of safety permitted

2. When the tensile strength of steel or wrought iron shell plate is not known, it must be taken as fifty-five thousand pounds per square inch [386.11 megapascals] for steel and forty-five thousand pounds per square inch [310.26 megapascals] for wrought iron.
3. The resistance to crushing of mild steel must be taken at ninety-five thousand pounds per square inch [655 megapascals] of the cross-sectional area.
4. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch [megapascals] of the cross-sectional area of the rivet shank must be used:

	POUNDS PER SQUARE INCH	MEGAPASCALS
Iron rivets in single shear	38,000	262.00
Iron rivets in double shear	76,000	524.00
Steel rivets in single shear	44,000	303.37
Steel rivets in double shear	88,000	606.69

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from the following table, or as ascertained by cutting out one rivet in the body of the joint.

SIZES OF RIVETS BASED ON PLATE THICKNESS

Thickness of plate, inches	1/4	9/32	5/16	11/32	3/8	13/32
Diameter of rivet after driving, inches	11/16	11/16	3/4	3/4	13/16	13/16
Thickness of plate, inches	7/16	15/32	1/2	9/16	5/8	
Diameter of rivet after driving, inches	15/16	15/16	15/16	1-1/16	1-1/16	

5. The following factors of safety must be increased by the inspector if the condition and safety of the boiler demand it:
 - a. The lowest factor of safety permissible on existing installations is four, except for horizontal-return-tubular boilers having continuous longitudinal lap seams more than twelve feet [3.66 meters] in length, when the factor of safety is eight; when this latter type boiler is removed from its existing setting, it may not be reinstalled for pressures in excess of fifteen pounds per square inch gauge [103 kilopascals].
 - b. Reinstalled or secondhand boilers must have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt-and-double-strap construction. Steam traction

engines must be considered as secondhand boilers for purposes of determining their factors of safety.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-03. Age limit of existing boilers.

1. The age limit of any boiler of nonstandard construction is thirty years except that after a thorough internal and external inspection and a hydrostatic pressure test of one and one-half times the allowable working pressure held for a period of at least thirty minutes during which no distress or leakage develops, any boiler having other than a lap-riveted longitudinal joint may be continued in operation without reduction in working pressure. The age limit of any boiler having lap-riveted longitudinal joints and operating at a pressure in excess of fifty pounds per square inch [344.74 kilopascals] is twenty years; this type of boiler, when removed from an existing setting, may not be reinstalled for a pressure in excess of fifteen pounds per square inch [103 kilopascals]. A reasonable time for replacement, not to exceed one year, may be given at the discretion of the chief boiler inspector.
2. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted joint for either butt seam or lap joints must be permanently discontinued for use under steam pressure. "Lap seam crack" means the typical crack frequently found in lap seams extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.
3. The age limit of boilers of standard construction installed prior to the date this law becomes effective is dependent on thorough internal and external inspection and hydrostatic pressure test of one and one-half times the allowable working pressure for a period of thirty minutes. If the boiler under these test conditions exhibits no distress or leakage, it may be continued in operation at the same working pressure.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-04. Welded boilers.

Boilers that have either longitudinal or circumferential seams of fusion welded construction must have been constructed and stamped in accordance with the rules and regulations of the American Society of Mechanical Engineers Code or must have the standard stamping of another state that has adopted a standard of construction equivalent to the standards of the American Society of Mechanical Engineers Code.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-05. Pressure on old boilers.

The maximum working pressure of an old boiler may not be increased to a greater pressure than would be allowed for a new boiler of the same construction.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-06. Cast iron headers and mud drums.

The maximum allowable working pressure on a watertube boiler, the tubes of which are secured to a cast iron or malleable iron header, or which have cast iron mud drums, may not exceed one hundred sixty pounds per square inch gauge [1103.17 kilopascals].

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-07. Pressure on cast iron boilers.

The maximum allowable working pressure for any cast iron boiler, except hot water boilers, is fifteen pounds per square inch gauge [103 kilopascals].

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-08. Safety valves and safety relief valves.

Safety valves and safety relief valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-09. Superheater safety valve requirements.

Superheater safety valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code section referenced in this article or the requirements of the edition of the American Society of Mechanical Engineers Code section to which the superheater they are installed was constructed.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-10. Capacity.

1. The minimum safety valve or safety relief valve relieving capacity for all high-pressure boilers other than steam traction engines must be determined by the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or by the requirements of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.
2. The minimum safety valve relieving capacity for steam traction engines must be determined using the edition of the National Board Inspection Code referenced in this article.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-11. Mounting.

The mounting of safety valves and safety relief valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or by the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-12. Operation.

1. The operation of safety valves and safety relief valves must meet the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, referenced in this article or by the requirements of the edition of the American Society of Mechanical Engineers Code, section 1, to which the boiler they are installed was constructed.

2. If the operating conditions of a valve are changed so as to require a new spring for a different pressure, the valve must be adjusted by the manufacturer, the manufacturer's authorized representative, or by a holder of a valid national board "VR" certificate who shall furnish and install a new nameplate.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-13. Steam stop valves.

1. Each discharge outlet, except safety valve, safety relief valves, reheater inlet and outlet, or superheater inlet connections, must be fitted with a stop valve located at an accessible point in the steam-delivery line and as near the boiler nozzle as is convenient and practicable. When such outlets are over two inch [50.8 millimeter] pipe size, the valve or valves used on the connection must be of the outside-screw-and-yoke-rising-spindle type so as to indicate from a distance by the position of its spindle whether it is closed or open, and the wheel may be carried either on the yoke or attached to the spindle. A plug-cock-type valve may be used provided the plug is held in place by a guard or a gland, the valve is equipped to indicate from a distance whether it is closed or open, and the valve is equipped with a slow-opening mechanism. In the case of a single boiler and prime mover installation, the stop valve required herein may be omitted provided the prime mover throttle valve is equipped with an indicator to show whether the valve is open or closed and is designed to withstand the required hydrostatic pressure test of the boiler.

2. When the boilers are connected to a common header, the connection from each boiler having a manhole opening must be fitted with two stop valves having an ample free-blow drain between them. The discharge of this drain must be visible to the operator while manipulating the valve. The stop valves must consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type must be used. Where intercommunicating systems of different pressures are installed, every boiler on each system must be equipped with an automatic nonreturn valve set next to the boiler.

3. When more than one stop valve is required, it must have a pressure rating at least equal to that required for the expected steam temperature and pressure at the valve, or the pressure rating at least equal to eighty-five percent of the lowest set pressure of any safety valve on the boiler drum and for the expected temperature of the steam at the valve, whichever is greater.

4. All valves and fittings on steam lines must have a pressure rating of at least one hundred pounds per square inch [689.48 kilopascals] in accordance with the applicable American national standards institute standard.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-14. Feedwater valves and piping.

1. Except for high-temperature water boilers, the feed piping must be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there also must be a globe or regulating valve on the branch to each boiler located between the check valve and the source of supply. Whenever globe valves are used on feed piping, the inlet must be under the disk of the valve. On single boiler-turbine unit installations, the boiler feed shutoff valve may be located upstream from the boiler feed check valve.
2. When the supply line to a boiler is divided into branch feed connections and all such connections are equipped with stop-and-check valves, the stop-and-check valves in the common source may be omitted.
3. If a boiler is equipped with duplicate feed arrangements, each such arrangement must be equipped as required by these rules.
4. A combination stop-and-check valve in which there is only one seat and disk and a valve stem is provided to close the valve when the stem is screwed down must be considered only as a stop valve, and a check valve must be installed as otherwise provided.
5. Where an economizer or other feedwater-heating device is connected directly to the boiler without intervening valves, the feed valves and check valves required must be placed on the inlet of the economizer or feedwater-heating device.
6. The recirculating return line for a high-temperature water boiler must be provided with the same stop valve, or valves, required by subsection 1 of section 33.1-14-05-13 for the main boiler and the required stop valve or valves is optional. A check valve may not be a substitute for a stop valve.
7. Except as provided for in subsections 8 and 10, boilers having more than five hundred square feet [46.45 square meters] of water-heating surface must have at least two means of feeding water. Each source of feeding must be capable of supplying water to the boiler at a pressure of six percent higher than the highest setting of any safety valve on the boiler. For boilers that are fired with solid fuel not in suspension, and for boilers whose setting or heat source can continue to supply sufficient heat to cause damage to the boiler if the feed supply is interrupted, one such means of feeding must not be subject to the same interruption as the first method.
8. Except as provided for in subsection 7, boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shut off of heat input if the water feed is interrupted.
9. For boilers having a water-heating surface of not more than one hundred square feet [9.29 square meters], the feed piping and connection to the boiler may not be smaller than one-half inch [12.7 millimeter] pipe size. For boilers having a water-heating surface more than one hundred square feet [9.29 square meters], the feed piping and connection to the boiler may not be less than three-quarter inch [19.05 millimeter] pipe size.

10. High-temperature water boilers must be provided with means of adding water to the boiler or system while under pressure.
11. The feedwater must be introduced into a boiler in such a manner that the water will not be discharged directly against surfaces exposed to gases of high temperature or to direct radiation from the fire or close to any riveted joints of the furnace sheets or of the shell. For pressures of four hundred pounds [2757.92 kilopascals] or over, the feedwater inlet through the drum must be fitted with shields, sleeves, or other suitable means to reduce the effects of temperature differentials in the shell or head. If necessary, the discharge end of the feed piping must be fitted with a baffle to divert the flow from riveted joints. Feedwater may not be introduced through the blowoff.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-15. Blowoff valves and piping.

1. A "blowoff" means a pipe connection provided with valves through which the water in the boiler may be blown out under pressure, excepting drains such as are used on water columns, gauge glasses, or piping of feedwater regulators, etc., used for the purpose of determining the operating condition of such equipment. Piping connections used primarily for continuous operation, such as deconcentrators on continuous blowdown systems, are not classed as blowoffs but the pipe connections and all fittings up to and including the first shutoff valve must be equal at least to the pressure requirements for the lowest set pressure of any safety valve on the boiler drum and with the corresponding saturated-steam temperature.
2. A surface blowoff may not exceed two and one-half inch [63.5 millimeter] pipe size, and the internal and external pipes, when used, must form a continuous passage, but with clearance between their ends and arranged so that the removal of either will not disturb the other.
3. Each boiler, except high temperature water boilers, must have a bottom blowoff pipe fitted with a valve or cock in direct connection with the lowest water space practicable.
4. All waterwalls and water screens which do not drain back into the boiler, and all integral economizers must be equipped with blowoff valves.
5. Except as permitted for miniature boilers, the minimum size of pipe and fittings is one inch [25.4 millimeters], and the maximum size is two and one-half inches [63.5 millimeters], except that for boilers with one hundred square feet [9.29 square meters] of heating surface or less, the minimum size of pipe and fittings is three-fourths inch [19.05 millimeters].
6. Condensate return connections of the same size or larger than the size herein specified may be used, and the blowoff may be connected to them. In such case the blowoff must be so located that the connection may be completely drained.
7. A bottom blowoff pipe when exposed to direct furnace heat must be protected by firebrick or other heat-resisting material which is so arranged that the pipe may be inspected.
8. An opening in the boiler setting for a blowoff pipe must be arranged to provide free expansion and contraction.
9. On a boiler having multiple blowoff pipes, a single master valve may be placed on the common blowoff pipe from the boiler, in which case only one valve on each individual blowoff is required. In such a case either the master valve or the individual valves or cocks must be of the slow-opening type.

10. Two independent slow-opening valves, or a slow-opening valve and a quick-opening valve or cock, may be combined in one body and may be used provided the combined fitting is the equivalent of two independent slow-opening valves, or a slow-opening valve and a quick-opening valve or cock and provided further that the failure of one to operate cannot affect the operation of the other.
11. The bottom blowoff pipes of every traction or portable boiler must have at least one slow-opening or quick-opening blowoff valve or cock conforming to the requirements of section 33.1-14-05-15.
12. Only one blowoff valve, which must be of a slow-opening type, is required on forced circulation and electric boilers having a normal water content not exceeding one hundred gallons [378.54 liters].

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-16. Factors of safety.

The minimum factor of safety may not be less than four for existing installations. The director authorizes an inspector to increase the factor of safety if the condition of the boiler or pressure vessel warrants it. If the owner or user does not concur with the inspector's decision, the owner or user may appeal to the director who may request a joint inspection by the chief boiler inspector and the deputy inspector or special inspector. Each inspector shall render the inspector's report to the director, and the director shall render the final decision, based upon the data contained in all the inspector's reports.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-17. Inspection of inaccessible parts.

If in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and the drilling of any part of the vessel to ascertain thickness.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-18. Repairs and renewals of fittings and appliances.

Whenever repairs are made to fittings and appliances or it becomes necessary to replace them, the work must comply with the requirements for new installations.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-19. Fusible plugs.

1. Fire-actuated fusible plugs, if used, must conform to the requirements of the American Society of Mechanical Engineers Code for power boilers.

2. They may be replaced by steel plugs if the boiler is gas-fired or oil-fired and is equipped with a low water fuel cutoff.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-20. Water columns, gauge glasses, and gauge cocks.

1. Outlet connections (except for damper regulator, feedwater regulator, low-water fuel cutoff, drains, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water therefrom) may not be placed on the piping that connects the water column to the boiler. The water column must be placed on the piping that connects the water column to the boiler. The water column must be provided with a valved drain of at least three-quarter inch [19.05 millimeter] pipe size, the drain to be piped to a safe location.
2. Each boiler constructed prior to 1999 must have three or more gauge cocks located within the visible length of the water glass, except when the boiler has two water glasses located on the same horizontal lines. Boilers not over thirty-six inches [.914 meters] in diameter, in which the heating surface does not exceed one hundred square feet [9.29 square meters] need have but two gauge cocks.
3. For all installations where the water gauge glass or glasses are more than thirty feet [9.14 meters] from the boiler operating floor, it is recommended that water level indicating or recording gauges be installed at eye height from the operating floor.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-21. Steam pressure gauge.

1. Each steam boiler must have a steam gauge, with dial range not less than one and one-half times the pressure at which the safety valve is set, connected to the steam space or to the steam connection to the water column. The steam gauge must be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and so arranged that the gauge cannot be shut off from the boiler except by a cock placed near the gauge and provided with a tee or lever handle arranged to be parallel to the pipe in which it is located when the cock is open.
2. When a steam pressure gauge connection longer than eight feet [2.44 meters] becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside-screw-and-yoke type and is locked open. The line must be ample size with provision for free blowing. Each boiler must be provided with a one-quarter inch [6.35 millimeter] nipple and globe valve connected to the steam space for the exclusive purpose of attaching a test gauge when the boiler is in service so that the accuracy of the boiler steam gauge may be ascertained.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-22. Pressure on nonstandard steam traction engines.

All steam traction engines that are of nonstandard boiler construction are limited to a maximum allowable working pressure of one hundred pounds per square inch [690 kilopascals], unless a thorough ultrasonic thickness survey, engineering analysis, and other inspections, approved by the

chief boiler inspector, determine that a different pressure is appropriate. The maximum allowable working pressure may not be greater than that permitted by the original manufacturer. Boilers herein described are not subject to the age limits of section 33.1-14-05-03.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-23. Duties of owners.

1. It is the duty of the owner or user of any steam traction engine on wheels to notify the chief boiler inspector of sale or other disposition of steam traction engines.
2. Within ten days of purchase, any person purchasing any steam traction engine shall notify the chief boiler inspector where it will be located and operated.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-05-24. Inspection and repair of standard and nonstandard steam traction engines.

The National Board Inspection Code referenced in this article must be used for the inspection and repair of all steam traction engines unless otherwise noted in this article.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-06
MINIATURE BOILERS - NEW INSTALLATIONS

Section

33.1-14-06-01 Requirements

33.1-14-06-01. Requirements.

1. All new boilers, except those exempt by law, to be installed in North Dakota must be reported to the chief boiler inspector by the owner or user and by the installer.
2. A miniature boiler, except one exempt by law, may not be installed in North Dakota unless it has been constructed, inspected, and stamped in conformity with section 1 of the American Society of Mechanical Engineers Code and is approved, registered, and inspected in accordance with this article.
3. A miniature boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of North Dakota may be accepted by the inspector. However, the person desiring to install the same shall make application for the installation and shall file with this application the manufacturer's data report covering the construction of the boiler in question.
4. All new installation boilers, including reinstalled boilers, must be installed in accordance with the requirements of the American Society of Mechanical Engineers Code and these regulations.
5. The owner or user shall install a carbon monoxide detector or alarm in equipment rooms where fuel-fired boilers and/or fuel-fired pressure vessels are located in accordance with the authority having jurisdiction.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-07

MINIATURE BOILERS - EXISTING INSTALLATIONS

Section

<u>33.1-14-07-01</u>	<u>General Rules</u>
<u>33.1-14-07-02</u>	<u>Maximum Allowable Working Pressure</u>
<u>33.1-14-07-03</u>	<u>Maximum Allowable Working Pressure for Nonstandard Boilers</u>
<u>33.1-14-07-04</u>	<u>Safety Valves</u>
<u>33.1-14-07-05</u>	<u>Gauge Glass and Water Level Indicator</u>
<u>33.1-14-07-06</u>	<u>Feeding and Feedwater Piping</u>
<u>33.1-14-07-07</u>	<u>Blowoff Piping</u>
<u>33.1-14-07-08</u>	<u>Steam Gauges</u>
<u>33.1-14-07-09</u>	<u>Stop Valves</u>
<u>33.1-14-07-10</u>	<u>Flue Connection</u>
<u>33.1-14-07-11</u>	<u>Duties of Owners</u>
<u>33.1-14-07-12</u>	<u>Steam Gauge</u>

33.1-14-07-01. General rules.

The rules adopted for power boilers applying to strength of materials and calculations to determine maximum allowable working pressure must be used for miniature boilers unless a special rule is stated in those rules.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-02. Maximum allowable working pressure.

The maximum allowable working pressure for standard boilers on the shell of a boiler or drum must be determined by section 33.1-14-05-01.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-03. Maximum allowable working pressure for nonstandard boilers.

Nonstandard miniature boilers:

1. Must conform to all requirements of this chapter.
2. Must have a factor of safety as given in subsection 5 of section 33.1-14-05-02.
3. Must be given an initial inspection that must include a hydrostatic pressure test.
4. May not have solder or silver solder as a method of attachment of any pressure part of the entire assembled unit.
5. May have a plate for the North Dakota stamp and registration number to be welded to boiler proper. The plate must be placed in a conspicuous and accessible location with a minimum size thickness of one-sixteenth inch [1.59 millimeters], length two inches [50.8 millimeters], and width one inch [25.4 millimeters].
6. May not exceed the design criteria limits as defined in subsection 21 of section 33.1-14-01-01.

7. Of the watertube, fired-coil and fired-radiator design must be considered as not meeting the requirements of this section.
8. Exceeding twelve inches [304.80 millimeters] internal diameter must have at least one, one-inch [25.4 millimeter] opening in the bottom of the shell and one, one-inch [25.4 millimeter] opening in each water leg. Boilers not exceeding twelve inches [304.80 millimeters] internal diameter must have one, one-half inch [12.7 millimeter] opening in the shell and one, one-half inch [12.7 millimeter] opening in each water leg.
9. Construction material used for fabrication of the shell must be steel of at least fifty-five thousand pounds per square inch [386.11 megapascals] tensile strength. Material of tubes may be steel, brass, or copper with a rating equal to materials from section 2 of the American Society of Mechanical Engineers Code.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-04. Safety valves.

1. Each miniature boiler must be equipped with an American society of mechanical engineers approved safety valve set at or below the maximum allowable working pressure.
2. The safety valve must be plainly marked by the manufacturer showing name or identifying trademark, nominal diameter, and pressure at which it is set to release.
3. The safety valve relieving capacity of each boiler must be such that it will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than six percent above the maximum allowable working pressure.
4. In those cases where the boiler is supplied with feedwater directly from a pressure main or system without the use of a mechanical feeding device, the safety valve must be set to release at a pressure not in excess of ninety-four percent of the lowest pressure obtained in the supply main or system feeding the boiler. Return traps may not be considered mechanical feeding devices.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-05. Gauge glass and water level indicator.

1. Each miniature boiler must be equipped with a water gauge glass for determination of water level.
2. The lowest permissible water level must be at a point one-third of the height of the shell, except where the boiler is equipped with internal furnace in which case it may not be less than one-third of the tube length above the top of the furnace. For small boilers where there is insufficient space for the usual type of gauge glass, water level indicators of the glass bull's-eye type may be used.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-06. Feeding and feedwater piping.

1. Every miniature boiler must be provided with at least one feed pump or other mechanical feeding device except if the following conditions exist:
 - a. If the boiler is connected to a water main or system having sufficient pressure to feed the boiler at any time while under pressure.
 - b. If the fuel burned is such that all heat input can be discontinued instantaneously by the operation of a valve, cock, or switch, thereby permitting the boiler pressure to be quickly lowered to a point where water can be introduced from the connection of the water main.
 - c. If the boiler is operated without extraction of steam (closed system) in which case the boiler is filled, when cold, through the connection or opening provided in accordance with the following rule.
2. Each miniature boiler must be fitted with a feedwater connection that may not be less than one-half inch [12.7 millimeter] iron pipe size. The feed piping must be provided with a check valve near the boiler and a valve or check between the check valve and the boiler.
3. Feedwater may be introduced through the blowoff connection if the boiler is operated without extraction of steam (closed system).
4. Feedwater may not be introduced through the water column or gauge glass connections while the boiler is under pressure.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-07. Blowoff piping.

1. Each miniature boiler must be provided with a blowoff connection not less than one-half inch [12.7 millimeter] iron pipe size, directly connected with the lowest water space.
2. Blowoff piping may not be galvanized and must be provided with a valve or cock.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-08. Steam gauges.

Each miniature boiler must be equipped with a steam gauge having a dial range not less than one and one-half times the safety valve setting. The gauge must be connected to the steam space or to the steam connection to the gauge glass by a brass or bronze composition siphon tube, or equivalent device that will keep the gauge tube filled with water.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-09. Stop valves.

The steam piping from a miniature boiler must be provided with a stop valve located as close to the boiler shell or drum as is practicable, except in those cases where the boiler and steam receiver are operated as a closed system.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-10. Flue connections.

Each gas-fired boiler must be equipped with a four inch [10.16 centimeter] vent pipe or flue extended to an approved location outside the building or connected to a chimney flue. If the horizontal run is more than ten feet [3.05 meters], the vent must be increased to six inches [15.24 centimeters]. A draft hood of approved design must be provided on each boiler.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-11. Duties of owners.

1. The owner and user of any steam traction engine or boiler on wheels shall notify the chief boiler inspector of sale or other disposition of steam traction engines.
2. Within ten days of purchase, any person purchasing any steam traction engine shall notify the chief boiler inspector where it will be located and operated.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-07-12. Steam gauge.

The steam pressure gauge must show the pressure at which the boiler is actually being operated. Adjustments to the gauge to show a lesser pressure are prohibited, and if any gauge has been so adjusted, such act will be considered a willful violation of this section.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-08
HEATING, LOW PRESSURE, AND HOT WATER SUPPLY BOILERS -
NEW INSTALLATIONS

Section

33.1-14-08-01 Requirements

33.1-14-08-01. Requirements.

1. Unless exempt by this article, a heating or low-pressure boiler may not be installed in this state unless it has been constructed, inspected, and stamped to conform with section IV of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and is approved, registered, and inspected in accordance with the requirements of this article.
2. All new installation boilers, including reinstalled boilers, must be installed in accordance with the requirements of the National Board Inspection Code and this article.
3. Heating boilers shall have a minimum of at least thirty-six inches [914 millimeters] between the top of the heating boiler and any overhead structure and at least thirty-six inches [914 millimeters] between all sides of the heating boiler and adjacent walls, structures, or other equipment. Heating boilers having manholes shall have at least eighty-four inches [2,135 millimeters] of clearance between the manhole opening and any wall, ceiling, piping, or other equipment that may prevent a person from entering the heating boiler. Alternative clearances in accordance with the manufacturer's recommendations are subject to acceptance by the chief boiler inspector.
4. A manually operated emergency shutoff switch or circuit breaker must be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch must be located just inside the door. If there is more than one door to the boiler room, there must be a switch located at each door. The emergency switch or circuit breaker must disconnect all power to the burner controls. This requirement is limited to single and modular boilers exceeding four hundred thousand British thermal units per hour input installed after January 1, 2006.
5. The owner or user shall install a carbon monoxide detector or alarm in equipment rooms where fuel-fired boilers and/or fuel-fired pressure vessels are located in accordance with the authority having jurisdiction.
6. Hot water supply boilers may not be installed unless constructed and approved in accordance with the American gas association, the American national standards institute, or the American Society of Mechanical Engineers Code.
7. All new boilers, except those exempt by law, to be installed in North Dakota must be reported to the chief boiler inspector by the owner or user, and by the installer.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-09
HEATING, LOW PRESSURE, AND HOT WATER SUPPLY BOILERS -
EXISTING INSTALLATIONS

Section

<u>33.1-14-09-01</u>	<u>American Society of Mechanical Engineers Code Boilers</u>
<u>33.1-14-09-02</u>	<u>Nonstandard Riveted Boilers</u>
<u>33.1-14-09-03</u>	<u>Nonstandard Welded Boilers</u>
<u>33.1-14-09-04</u>	<u>Nonstandard Cast Iron Boilers</u>
<u>33.1-14-09-05</u>	<u>Fired Radiators</u>
<u>33.1-14-09-06</u>	<u>General</u>
<u>33.1-14-09-07</u>	<u>Pressure-Relieving Devices</u>
<u>33.1-14-09-08</u>	<u>Steam Pressure Gauge</u>
<u>33.1-14-09-09</u>	<u>Water Gauge Glasses</u>
<u>33.1-14-09-10</u>	<u>Stop Valves and Check Valves</u>
<u>33.1-14-09-11</u>	<u>Feedwater Connections</u>
<u>33.1-14-09-12</u>	<u>Pressure or Altitude Gauges</u>
<u>33.1-14-09-13</u>	<u>Thermometers</u>
<u>33.1-14-09-14</u>	<u>Temperature Control</u>
<u>33.1-14-09-14.1</u>	<u>Pressure Control</u>
<u>33.1-14-09-15</u>	<u>Provisions for Thermal Expansion in Hot Water Systems</u>
<u>33.1-14-09-16</u>	<u>Return Pump</u>
<u>33.1-14-09-17</u>	<u>Repairs and Renewals of Fittings and Appliances</u>
<u>33.1-14-09-18</u>	<u>Low-Water Fuel Cutoff</u>
<u>33.1-14-09-19</u>	<u>Modular Hot Water Heating Boilers</u>
<u>33.1-14-09-20</u>	<u>Bottom Blowoff and Drain Valves</u>
<u>33.1-14-09-21</u>	<u>Emergency Shutoff Switches</u>

33.1-14-09-01. American Society of Mechanical Engineers Code boilers.

The maximum allowable working pressure of a boiler built in accordance with the American Society of Mechanical Engineers Code may not exceed the pressure indicated by the manufacturer's identification stamped or cast upon the boiler or upon a plate secured to it.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-02. Nonstandard riveted boilers.

The maximum allowable working pressure on the shell of a noncode riveted heating boiler must be determined in accordance with section 33.1-14-05-01 except that the maximum allowable working pressure of a steam heating boiler may not exceed fifteen pounds [103 kilopascals] and a hot water boiler may not exceed thirty pounds [206.85 kilopascals] at a temperature not exceeding two hundred fifty degrees Fahrenheit [120 degrees Celsius].

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-03. Nonstandard welded boilers.

The maximum allowable working pressure of a noncode steel or wrought iron heating boiler of welding construction may not exceed fifteen pounds [103 kilopascals]. For other than steam service,

the maximum allowable working pressure must be calculated in accordance with section IV of the American Society of Mechanical Engineers Code.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-04. Nonstandard cast iron boilers.

1. The maximum allowable working pressure of a noncode boiler composed principally of cast iron may not exceed fifteen pounds [103 kilopascals] for steam service or thirty pounds [206.85 kilopascals] for hot water service.
2. The maximum allowable working pressure of a nonstandard boiler having cast iron shell or heads and steel or wrought iron tubes may not exceed fifteen pounds [103 kilopascals] for steam service or thirty pounds [206.85 kilopascals] for water service.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-05. Fired radiators.

A radiator in which steam pressure is generated at a pressure of fifteen pounds [103 kilopascals] or less is considered a low-pressure boiler.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-06. General.

If in the judgment of the inspector, a boiler is unsafe for operation at the pressure previously approved, the pressure must be reduced, proper repair made, or the boiler retired from service.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-07. Pressure-relieving devices.

1. Safety valve requirements for steam boilers are:
 - a. Each steam boiler must have one or more American Society of Mechanical Engineers approved safety valves of the spring-pop type adjusted and sealed to discharge at a pressure not to exceed fifteen pounds per square inch [103 kilopascals]. Seals must be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves must be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. For iron-and-steel-bodied valves exceeding two inch [50.8 millimeter] pipe size, the drain hole or holes must be tapped not less than three-eighths inch [9.53 millimeter] pipe size.
 - b. Each safety valve three-quarter inch [10.05 millimeters] diameter or over, used on a steam boiler, must have a substantial device that will positively lift the disk from its seat at least one-sixteenth inch [1.59 millimeters] when there is no pressure in the boiler. The seats and disks must be of suitable material to resist corrosion.

- c. A safety valve for a steam boiler may not be smaller than three-quarter inch [19.05 millimeters] unless the boiler and radiating surfaces consist of a self-contained unit. A safety valve may not be larger than four and one-half inches [114.3 millimeters]. The inlet opening must have an inside diameter equal to, or greater than, the seat diameter.
- d. The minimum relieving capacity of valve or valves is governed by the capacity marking on the boiler.
- e. The minimum valve capacity in pounds per hour is the greater of that determined by dividing the maximum British thermal units output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by one thousand, or is determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface. (One British thermal unit equals 1.055 x 10 to the third power joules.)

**MINIMUM POUNDS OF STEAM PER HOUR
PER SQUARE FOOT OF HEATING SURFACE**

<u>Boiler Heating Surface</u>	<u>Firetube Boilers</u>	<u>Watertube Boilers</u>
<u>Hand-fired</u>	<u>5</u>	<u>6</u>
<u>Stoker-fired</u>	<u>7</u>	<u>8</u>
<u>Oil, gas, or pulverized fuel-fired</u>	<u>8</u>	<u>10</u>

- f. Safety valves must be installed with the valve spindle in the vertical position. Discharge piping, to a safe location, may be required by the inspector.
2. When a boiler is fired only by a gas having a heat value not in excess of two hundred British thermal units per cubic feet [745.58 x 10 to the fourth power joules per cubic meter], the minimum safety valve or safety relief valve relieving capacity may be based on the values given for hand-fired boilers above.
 3. The safety valve or safety relief valve relieving capacity for electric boilers is three and one-half pounds [3692.5 joules] per hour per kilowatt input.
 - a. The safety valve capacity for each steam boiler must be such that with the fuel-burning equipment installed and operated at maximum capacity the pressure cannot rise more than five pounds per square inch [34.47 kilopascals] above the maximum allowable working pressure.
 - b. When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity must be increased, if necessary, to meet the new conditions, the additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.
 4. Safety relief valve requirements for hot water boilers are:
 - a. Each hot water heating boiler must have at least one American society of mechanical engineers approved pressure relief valve set to relieve at or below the maximum allowable working pressure of the boiler. Each hot water supply boiler must have at least one officially rated safety relief valve or at least one American society of mechanical engineers approved pressure-temperature relief valve of the automatic-reseating type set to relieve at or below the maximum allowable working pressure of the boiler. Pressure relief valves officially rated as to capacity must have pop action when tested by steam.

When more than one safety relief valve is used on either hot water heating or hot water supply boilers, the additional valve or valves must be officially rated and may be set within a range not to exceed six pounds per square inch [41.47 kilopascals] above the maximum allowable working pressure of the boiler up to and including sixty pounds per square inch [413.69 kilopascals] and ten percent for those having a maximum allowable working pressure exceeding sixty pounds per square inch [413.69 kilopascals]. Safety relief valves must be spring loaded without disk guides on the pressure side of the valve. Safety relief valves must be arranged so that they cannot be reset to relieve at a higher pressure than the maximum permitted by this subdivision.

- b. Each safety relief valve must have a substantial device that will positively lift the disk from its seat at least one-sixteenth inch [1.59 millimeters] when there is no pressure on the boiler.
- c. Materials subject to deterioration or vulcanization when subject to saturated steam temperature corresponding to capacity test pressure may not be used for any part.
- d. A safety relief valve may not be smaller than three-quarter inch [19.05 millimeters] nor larger than four and one-half inch [114.3 millimeter] standard pipe size, except that boilers having a heat input not greater than fifteen thousand British thermal units per hour [15.38 x 10 to the seventh power joules] may be equipped with a rated safety relief valve of one-half inch [12.7 millimeter] standard pipe size. The inlet opening must have an inside diameter approximately equal to, or greater than, the seat diameter. The minimum opening through any part of the valve may not be less than one-quarter inch [6.35 millimeters] diameter or its equivalent area.
- e. The required steam-relieving capacity, in pounds per hour, of the pressure-relieving device or devices on a boiler must be determined by dividing the maximum output in British thermal units at the boiler nozzle obtained by the firing of any fuel for which the unit is designed by one thousand or by multiplying the square feet of heating surface by five. In every case, the requirements of subdivision g must be met. (One British thermal unit equals 1.055 x 10 to the third power joules.)
- f. When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity must be increased, if necessary, to meet the new conditions and be in accordance with subdivision g. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.
- g. Safety relief valve capacity for each boiler must be such that with maximum heat input the pressure cannot rise more than six pounds per square inch [41.37 kilopascals] above the maximum allowable working pressure for pressures up to and including sixty pounds per square inch [413.69 kilopascals] and ten percent for maximum allowable working pressures over sixty pounds per square inch [413.69 kilopascals].
- h. Safety relief valves must be installed with the spindle in the vertical position. Discharge piping, to a safe location, must be installed.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-08. Steam pressure gauge.

- 1. Each steam boiler must have a steam gauge or a compound steam gauge connected to its steam space or to its water column or to its steam connections. The gauge or connection must contain a siphon or equivalent device that will develop and maintain a water seal that will

prevent steam from entering the gauge tube. The connection must be arranged so that the gauge cannot be shut off from the boiler except by a cock placed in the pipe at the gauge and provided with a tee or a lever handle arranged to be parallel to the millimeter standard pipe size, but where steel or wrought iron pipe or tubing is used, they must be not less than one-half inch [12.7 millimeter] standard pipe size. The minimum size of a siphon, if used, must be one-quarter inch [6.35 millimeters] inside diameter. Ferrous and nonferrous tubing having inside diameters at least equal to that of standard pipe sizes listed above may be substituted for pipe in which it is located when the cock is open. The connections to the boiler must be not less than one-quarter inch [6.35 millimeter].

2. The scale on the dial of a steam boiler gauge must be graduated to not less than thirty pounds per square inch [206.84 kilopascals] nor more than sixty pounds per square inch [413.69 kilopascals]. The gauge must be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point. The travel of the pointer from zero to thirty pounds per square inch [206.84 kilopascals] pressure must be at least three inches [76.2 millimeters]. On a compound gauge, effective stops must be set at the limits of the gauge readings on both the pressure and vacuum sides of the gauge.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-09. Water gauge glasses.

1. Each steam boiler must have one or more water gauge glasses attached to the water column or boiler by means of valved fittings not less than one-half inch [12.70 millimeter] pipe size, with the lower fitting provided with a drain valve of the straight type with opening not less than one-quarter inch [6.35 millimeters] diameter to facilitate cleaning. Gauge glass replacement must be possible under pressure. Water glass fittings may be attached directly to a boiler.
2. The lowest visible part of the water gauge glass must be at least one inch [25.4 millimeters] above the lowest permissible water level recommended by the boiler manufacturer. With the boiler operating at this lowest permissible water level, there must be no danger of overheating any part of the boiler. Transparent material other than glass may be used for the water gauge provided that the material will remain transparent and has proved suitable for the pressure, temperature, and corrosive conditions expected in service.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-10. Stop valves and check valves.

1. If a steam boiler may be closed off from the heating system by closing a steam stop valve, there must be a check valve in the condensate return line between the boiler and the system.
2. If any part of a steam heating system may be closed off from the remainder of the system by closing a steam stop valve, there must be a check valve in the condensate return pipe from that part of the system.
3. If more than one boiler is connected to a system, they must each be equipped with main stops on the discharge and return side, in such a manner not affecting operation of any other boiler.
4. When single boilers are located above the system and can be drained without draining the system, stop valves are optional.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-11. Feedwater connections.

1. Feedwater connections must be independent of any water gauge connections and be made to the condensate return pipe or reservoir of the condensate return tank.
2. Alternatively, makeup water or water treatment may be introduced through an independent connection. The water flow from the independent connection may not discharge directly against parts of the boiler exposed to direct radiant heat from the fire. Makeup water or water treatment may not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, blowoff, water column, water gauge glass, pressure gauge, or temperature gauge.
3. When there is more than one boiler connected to a system, each boiler must have an independent feedwater line.
4. There must be a stop valve and a check valve in the feedwater line at the boiler. For hot water heating boilers, the check valve must be a backflow preventer approved by the state plumbing board.
5. Hot water heating boilers, not equipped with an approved low-water fuel cutoff, must be equipped with an automatic feeding device or pressure-reducing valve method of feeding, in addition to a manual bypass capable of feeding the boiler at a pressure of six percent above safety relief valve setting.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-12. Pressure or altitude gauges.

1. Each hot water boiler must have a pressure or altitude gauge connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gauge. The handle of the cock must be parallel to the pipe in which it is located when the cock is open.
2. The scale on the dial of the pressure or altitude gauge must be graduated to not less than one and one-half nor more than three and one-half times the pressure at which the safety relief valve is set. The gauge must be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point.
3. Piping or tubing for pressure or altitude gauge connections must be of nonferrous metal when smaller than one inch [25.4 millimeter] pipe size.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-13. Thermometers.

Each hot water boiler must have a thermometer located and connected so that it is easily readable when observing the water pressure or altitude. The thermometer must be located so that it will at all times indicate the temperature in degrees Fahrenheit [Celsius] of the water in the boiler at or near the outlet.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-14. Temperature control.

Each automatically fired hot water boiler must be protected from over temperature by two temperature-operated controls.

1. Each individual automatically fired water boiler must have a safety limit control that will cut off the fuel supply to prevent water temperature from exceeding the maximum allowable temperature at the boiler outlet. The water temperature safety control must be constructed to prevent a temperature setting above the maximum allowable temperature and be of the manual reset type.
2. Each individual hot water boiler or each system of commonly connected boilers without intervening valves must have a control that will cut off the fuel supply when the water temperature reaches an operating limit, which must be less than the maximum allowable temperature.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-14.1. Pressure control.

Each automatically fired steam boiler must be protected from over pressure by two pressure-operated controls.

1. Each automatically fired steam boiler must have a safety limit control that will cut off the fuel supply to prevent steam pressure from exceeding the fifteen pounds per square inch [103 kilopascals] maximum allowable working pressure of the boiler. Each control must be constructed to prevent a pressure setting above fifteen pounds per square inch [103 kilopascals] and be of the manual reset type.
2. Each individual steam boiler or each system of commonly connected steam boilers must have a control that will cut off the fuel supply when the pressure reaches an operating limit, which must be less than the maximum allowable pressure.
3. Shutoff valves of any type may not be placed in the steam pressure connection between the boiler and the controls described in subsections 1 and 2. These controls must be protected with a siphon or equivalent means of maintaining a water seal that will prevent steam from entering the control.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-15. Provisions for thermal expansion in hot water systems.

1. All hot water heating systems incorporating hot water tanks or fluid relief columns must be so installed as to prevent freezing under normal operating conditions.
2. Systems with open expansion tank. If the system is equipped with an open expansion tank, an indoor overflow from the upper portion of the expansion tank must be provided in addition to an open vent, the indoor overflow to be carried within the building to a suitable plumbing fixture or to the basement.

3. Closed-type systems. If the system is of the closed type, an airtight tank or other suitable air cushion must be installed that will be consistent with the volume and capacity of the system, and must be suitably designed for a hydrostatic test pressure of two and one-half times the allowable working pressure of the system. Expansion tanks for systems designed to operate above thirty pounds per square inch [206.85 kilopascals] must be constructed in accordance with the American Society of Mechanical Engineers Code, section VIII, division 1. Except for prepressurized tanks, provisions must be made for draining the tank without emptying the system. Provisions must also be made for changing of all tanks without emptying the system.
4. Expansion tank capacities for gravity hot water systems. Based on two-pipe system with average operating water temperature one hundred seventy degrees Fahrenheit [76.7 degrees Celsius], using cast iron column radiation with heat emission rate one hundred fifty British thermal units per hour per square foot [158.25 x 10 to the 3rd power joules per .0929 square meter] equivalent direct radiation.

<u>Square Feet of Installed Equivalent Direct Radiation</u>		<u>Tank Capacity, Gallons</u>
<u>Up</u>	<u>to</u> <u>350</u>	<u>18</u>
<u>Up</u>	<u>to</u> <u>450</u>	<u>21</u>
<u>Up</u>	<u>to</u> <u>650</u>	<u>24</u>
<u>Up</u>	<u>to</u> <u>900</u>	<u>30</u>
<u>Up</u>	<u>to</u> <u>1,100</u>	<u>35</u>
<u>Up</u>	<u>to</u> <u>1,400</u>	<u>40</u>
<u>Up</u>	<u>to</u> <u>1,600</u>	<u>2-30</u>
<u>Up</u>	<u>to</u> <u>1,800</u>	<u>2-30</u>
<u>Up</u>	<u>to</u> <u>2,000</u>	<u>2-35</u>
<u>Up</u>	<u>to</u> <u>2,400</u>	<u>2-40</u>

5. Expansion tank capacities for forced hot water systems. Based on average operating water temperature one hundred ninety-five degrees Fahrenheit [90 degrees Celsius], a fill pressure twelve pounds per square inch gauge [82.74 kilopascals] and a maximum operating pressure thirty pounds per square inch gauge [206.84 kilopascals].

<u>System Volume, Gallons</u>	<u>Nonpressurized Tank Capacity Gallons</u>	<u>Prepressurized Tank Capacity Gallons</u>
<u>100</u>	<u>15</u>	<u>9</u>
<u>200</u>	<u>30</u>	<u>17</u>
<u>300</u>	<u>45</u>	<u>25</u>
<u>400</u>	<u>60</u>	<u>33</u>
<u>500</u>	<u>75</u>	<u>42</u>
<u>1,000</u>	<u>150</u>	<u>83</u>
<u>2,000</u>	<u>300</u>	<u>165</u>

Note: System volume includes volume of water in boiler, radiation, and piping, not including the expansion tank.

6. Expansion tanks for hot water supply systems must be constructed in accordance with the American Society of Mechanical Engineers Code, section VIII, division 1 if over five gallons in size of water and air.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-16. Return pump.

Each condensate return pump where practicable must be provided with an automatic water level control set to maintain the water level within the limits of two gauge cocks.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-17. Repairs and renewals of fittings and appliances.

Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, all work must comply with all requirements for new installations.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-18. Low-water fuel cutoff.

1. Each automatically fired hot water heating boiler must have an automatic low-water fuel cutoff that has been designed for hot water service and which can be tested without draining the system or the boiler. It must be so located as to automatically cut off the fuel supply prior to the surface of the water falling below the lowest safe water level as established by the boiler manufacturer.

2. A coil-type or watertube boiler requiring forced circulation to prevent overheating of the coils or tubes must have a flow-sensing device installed in the boiler or piping in lieu of the required low-water fuel cutoff that will cut off the fuel supply when the circulation flow is interrupted. Functioning of the low-water fuel cutoff due to a low-water condition must cause safety shutdown and lockout. Where a reset device is separate from the low-water fuel cutoff, a means must be provided to indicate actuation of the low-water fuel cutoff. The manual reset may be the instantaneous type or may include a time delay of not more than three minutes after the fuel has been cut off.

3. Low-water fuel cutoff requirements for steam boilers are addressed by section 33.1-14-03-07.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-19. Modular hot water heating boilers.

1. Individual modules must be limited to a maximum input of four hundred thousand British thermal units [4.22 x 10 to the eighth power joules] per hour (gas), three gallons [11.36 liters] per hour (oil), or one hundred fifteen kilowatt-hours (electricity).

2. Each module of a modular hot water heating boiler must be equipped with the following:

- a. Pressure/altitude gauge (see section 33.1-14-09-12).

- b. Thermometer (see section 33.1-14-09-13).
 - c. Operating temperature control (see subsection 2 of section 33.1-14-09-14).
 - d. Safety relief valve (see section 33.1-14-09-07).
 - e. Drain valve (see section 33.1-14-09-20).
3. The assembled modular hot water heating boiler must be equipped with the following:
- a. High-limit temperature control (see subsection 1 of section 33.1-14-09-14).
 - b. Low-water fuel cutoff (see section 33.1-14-09-18).
 - c. Makeup feedwater connection (see section 33.1-14-09-11).
 - d. Expansion tank provisions (see section 33.1-14-09-15).
 - e. Stop valves (see section 33.1-14-09-10).

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-20. Bottom blowoff and drain valves.

1. Each steam boiler having a capacity over twenty-five gallons [94.6 liters] must have a bottom blowoff connection fitted with a valve or cock connected to the lowest water space practicable with a minimum size as shown below:

<u>Minimum Required Safety Valve Capacity in Pounds of Steam/Hour</u>				<u>Steam Boiler Blowoff Piping Valve Size, Inches (Min.)</u>
<u>Up</u>	<u>to</u>	<u>500</u>		<u>3/4</u>
<u>501</u>	<u>to</u>	<u>1,250</u>		<u>1</u>
<u>1,251</u>	<u>to</u>	<u>2,500</u>		<u>1 1/4</u>
<u>2,501</u>	<u>to</u>	<u>6,000</u>		<u>1 1/2</u>
<u>6,001</u>	<u>and</u>	<u>larger</u>		<u>2</u>

2. Each hot water boiler and each steam boiler having a capacity not exceeding twenty-five gallons [94.6 liters] must have a drain valve connected to the lowest water space practicable. The minimum size of this drain valve is three-quarter inch [1.9 centimeters].

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-09-21. Emergency shutoff switches.

1. A manually operated emergency shutoff switch or circuit breaker must be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch must be located just inside the door. If there is more than one door to the boiler room, there must be a switch located at each door.
2. The emergency switch or circuit breaker must disconnect all power to the burner controls.

3. This requirement is limited to single and modular boilers exceeding four hundred thousand British thermal units per hour input installed after January 1, 2006.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-10

UNFIRED PRESSURE VESSELS

Section

33.1-14-10-01 Construction and Installation Standards - Exceptions

33.1-14-10-02 Application of Standards - Repairs

33.1-14-10-03 Allowance for State Specials

33.1-14-10-04 Change of Service from Anhydrous Ammonia to Propane

33.1-14-10-01. Construction and installation standards - Exceptions.

1. Unfired pressure vessels may not be installed in North Dakota unless such vessels have been constructed in accordance with the American society of mechanical engineers boiler and pressure vessel code, section VIII, division 1, 2, or 3, and bear the American Society of Mechanical Engineers stamping as proof of such construction.
2. Manufacturers shall register unfired pressure vessels with the national board of boiler and pressure vessel inspectors. Unfired pressure vessels must bear the required stamping of the national board.
3. The requirements of this section apply to all pressure vessels within the scope of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, section VIII, division 1, 2, or 3, with these exceptions:
 - a. Pressure vessels under federal control.
 - b. Pressure vessels that do not exceed four cubic feet [30 United States gallons] in volume and two hundred fifty pounds per square inch gauge [1723.70 kilopascals] in pressure.
 - c. Pressure vessels that do not exceed one and one-half cubic feet [11.22 United States gallons] in volume and six hundred pounds per square inch gauge [4136.88 kilopascals] in pressure.
 - d. Unfired pressure vessels installed or ordered prior to November 1, 1987. However, these unfired pressure vessels must be maintained in a safe operating condition using ANSI/NB-23 and ANSI/API-510 as guidelines. Unfired pressure vessels referenced by this section must be protected with the American Society of Mechanical Engineers stamped pressure relief devices as defined in section VIII of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. Existing pressure relief devices installed on unfired pressure vessels referenced by this section will be considered acceptable if the pressure relief device is set for the correct pressure, if the usage is correct, and if the device is in a satisfactory operating condition.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-10-02. Application of standards - Repairs.

These rules apply only to new construction, except as noted below:

1. Reinstalled pressure vessels must meet the rules for new construction. Exception: national board registration is required only for those vessels ordered and constructed after November 1, 1987.
2. Repairs to unfired pressure vessels and to safety and safety relief valves for those vessels:

- a. Repairs to safety valves and safety relief valves must be such that valve function is not impaired and the repaired valve will perform to the standards for which it was originally constructed. It is recommended that these repairs be made by a firm in possession of a valid "VR" certificate of authorization from the national board of boiler and pressure vessel inspectors.
- b. Repairs to unfired pressure vessels must be such that vessels repaired will be returned to a safe and satisfactory operating condition, provided there is not deviation from the original design. It is recommended that these repairs be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
- c. The National Board Inspection Code and the American Petroleum Institute Code (ANSI/API-510, 2006 edition) cover repair and alteration procedures. The ANSI/API-510 may be used to cover the maintenance inspection, repair, alteration, and rerating procedure for pressure vessels used by the petroleum and chemical process industries. It is intended that ANSI/NB-23 cover installations other than those covered by ANSI/API-510.

3. Alterations to unfired pressure vessels:

- a. Alterations, as defined in ANSI/NB-23, must be made by a national board "R" certificate holder.
- b. Alterations may also be made by an organization operating under the provisions of ANSI/API-510, provided the alteration is within the scope of ANSI/API-510.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-10-03. Allowance for state specials.

If, due to a valid impediment to compliance with the American Society of Mechanical Engineers Code in its entirety, an unfired pressure vessel cannot bear the American society of mechanical engineers and national board stamping, details in the English language, and specifications and calculations, approved by a registered professional engineer experienced in pressure vessel design, must be submitted to the chief inspector by the owner or user. Approval as "state special" must be obtained from the chief inspector before construction is started.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-10-04. Change of service from anhydrous ammonia to propane.

Unfired pressure vessels that have been previously used in anhydrous ammonia service may be converted to liquid petroleum service only with all of the following conditions being met:

1. The pressure vessel is American Society of Mechanical Engineers Code constructed and national board registered.
2. The pressure vessel has a manhole opening for access or a manhole opening is provided as an alteration.
3. The pressure vessel is in satisfactory condition internally and externally using the National Board Inspection Code to determine acceptable condition.

4. The pressure vessel has passed a wet fluorescent magnetic particle test made by an individual possessing a valid American society for nondestructive testing level II or III certificate issued in accordance with the requirements of the American society for nondestructive testing.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-14-11

HOBBY BOILER OPERATOR LICENSING

Section

- 33.1-14-11-01 Definitions
- 33.1-14-11-02 License Required
- 33.1-14-11-03 Existing Operator Licenses
- 33.1-14-11-04 Application
- 33.1-14-11-05 Term of the License
- 33.1-14-11-06 License Renewal
- 33.1-14-11-07 Hobby Boiler Operation
- 33.1-14-11-08 License Denial or Revocation

33.1-14-11-01. Definitions.

1. "Director" means the director of the department of environmental quality.
2. "Hobby boiler" means a hand-fired steam boiler that operates above fifteen pounds per square inch [103.42 kilopascals] gauge pressure operated during a parade, an exhibition, or a threshing show where the public is invited and not otherwise exempt from North Dakota Century Code section 23.1-16-06.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-11-02. License required.

1. Except as provided in subsection 3, no individual may operate a hobby boiler in this state unless licensed under this chapter.
2. The director may not issue a hobby boiler license to an individual unless the individual:
 - a. Files a written application with the director on a form prescribed by the director;
 - b. Passes an examination developed by the director and pays an examination fee of twenty-five dollars;
 - c. Provides evidence of the successful completion of one hundred twenty hours of apprenticeship training with a licensed hobby boiler operator. Training must include all of the following:
 - (1) Basic boiler, steam engine, and piping fundamentals;
 - (2) Initial firing of the boiler with wood or coal or both and warmup of the steam engine;
 - (3) Basic operation of the boiler and steam engine to include operation of:
 - (a) Blower valve;
 - (b) Main steam valve;
 - (c) Throttle valve and governor;
 - (d) Injector and pump operation to include feedline stop and check valves;
 - (e) Gauge glass, gauge cocks, and water column;

(f) Safety valve and fusible plug basics;

(g) Blowdown valve use; and

(h) Steam engine operation and drain valves.

(4) Normal shutdown procedures;

(5) Emergency shutdown procedures;

(6) Driving and steering to include the use of the reversing lever and stopping procedures; and

(7) Lining up for belt operation.

d. Is at least sixteen years of age; and

e. Pays a twenty-five dollar license fee.

3. A license is not required under this chapter if the hobby boiler operator is not a resident of this state and is qualified by reason of possessing a valid license from another state or Canadian province and this license has been approved by the director.

4. Attendance at one hobby boiler training seminar approved by the director may substitute for up to forty hours of apprenticeship training.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-11-03. Existing operator licenses.

An individual who has operated a hobby boiler within this state as of July 1, 2007, may receive a license without complying with subdivisions b and c of subsection 2 of section 33.1-14-11-02. "Operated a hobby boiler" means demonstrated operating experience in boiler operations and maintenance that include sufficient training, observation, and personal participation to enable the individual to safely operate a hobby boiler.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-11-04. Application.

An individual applying for a hobby boiler operator license must complete an application in the form provided by the director, pay any required fee, and provide a notarized affidavit signed by a licensed North Dakota hobby boiler operator attesting to the applicant's completion of one hundred twenty hours of training regarding the operation of a hobby boiler. The notarized affidavit need not be provided if it has already been provided by the applicant in connection with a previous application or if the applicant is applying for an existing operator license under section 33.1-14-11-03.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-11-05. Term of the license.

A hobby boiler operator license is valid for six years except that an initial license expires on January first of the year after the license has been in effect for five years.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-11-06. License renewal.

An individual may apply to renew a hobby boiler operator license for six years by submitting to the director a renewal request along with a twenty-five dollar renewal fee in advance of the license expiration date.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-11-07. Hobby boiler operation.

1. Notwithstanding any other provision of this section and with the exception of the operation of miniature boilers, two licensed operators or a licensed operator and an apprentice operator must be in attendance on a hobby boiler during a parade or plowing demonstration or during belt operation. At least one licensed operator must be in attendance on a hobby boiler at all other times except when it is considered safe for a hobby boiler operator to leave the hobby boiler as described in subsection 2.

2. A hobby boiler operator is required to be in attendance on a hobby boiler any time the steam pressure is above fifteen pounds per square inch [103.42 kilopascals] gauge and rising unless all of the following conditions are met:

a. The water is above the one-third level in the gauge glass;

b. The fire is extinguished or banked;

c. All draft doors are closed;

d. The main steam outlet valve or dome valve is closed; and

e. The boiler pressure is at least twenty pounds per square inch [137.90 kilopascals] gauge below the safety valve set pressure and the boiler pressure is decreasing.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

33.1-14-11-08. License denial or revocation.

1. The director may deny an application for a hobby boiler operator's license if the applicable requirements of North Dakota Century Code chapter 23.1-16 and this chapter are not met or if an applicant is not capable of operating a hobby boiler in a safe manner.

2. The director may revoke a hobby boiler operator's license if the applicable requirements of North Dakota Century Code chapter 23.1-16 and this chapter are not met, if an operator operates a hobby boiler carelessly or negligently or otherwise endangers the health and safety of others.

3. An applicant or license holder may appeal the denial or revocation of a license by filing a written appeal with the director within ten days of receipt of written notice of such a decision. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner provided in North Dakota Century Code chapter 28-32.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-16

Law Implemented: NDCC 23.1-16

CHAPTER 33.1-15-01

33.1-15-01-01. Purpose.

It is the purpose of these air quality standards and emission regulations to state such requirements as shall be required to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property; to prevent injury to plant and animal life; to promote the economic and social development of this state; to foster the comfort and convenience for the people; and to facilitate the enjoyment of the natural attractions of this state.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-02; S.L. 2017, ch. 199, § 21

33.1-15-01-04. Definitions.

As used in this article, except as otherwise specifically provided or when the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23.1-06.
2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. "Ambient air" means the surrounding outside air.
5. "ASME" means the American society of mechanical engineers.
6. "Coal conversion facility" means any of the following:
 - a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.
 - b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.
 - c. A coal beneficiation plant, and all additions thereto, which improve the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.
7. "Control equipment" means any device or contrivance which prevents or reduces emissions.
8. "Department" means the department of environmental quality.
9. "Emission" means a release of air contaminants into the ambient air.
10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable emission limit or emission standard specified in this article or a permit issued pursuant to this article.

11. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.
12. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to title 40 Code of Federal Regulations parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to title 40 Code of Federal Regulations 52.21 or under regulations approved pursuant to title 40 Code of Federal Regulations part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.
13. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.
14. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.
15. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.
16. "Hazardous waste" has the same meaning as given by chapter 33.1-24-02.
17. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.
18. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.
19. "Industrial waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
20. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
21. "Installation" means any property, real or personal, including processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.
22. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.

23. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
24. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.
25. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
26. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.
27. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.
28. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.
29. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.
30. "Pesticide" includes:
 - a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;
 - b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
 - c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscicides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.
31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.
32. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths micrometers.
33. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
34. "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

35. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].
36. "Premises" means any property, piece of land or real estate, or building.
37. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
38. "Process weight rate" means the rate established as follows:
 - a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
 - b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.
39. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33.1-10.
40. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.
41. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1,144 degrees Kelvin to 1,255 degrees Kelvin]).
42. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.
43. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.
44. "Source" means any property, real or personal, or person contributing to air pollution.
45. "Source operation" means the last operation preceding emission, which operation:
 - a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and
 - b. Is not an air pollution abatement operation.
46. "Special waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

47. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.
48. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].
49. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.
50. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.
51. "Trash" means refuse commonly generated by food warehouses, wholesalers, and retailers which is comprised only of nonrecyclable paper, paper products, cartons, cardboard, wood, wood scraps, and floor sweepings and other similar materials. Trash may not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash must be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste, and similar substances.
52. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on July 1, ~~2015~~2019, which is incorporated by reference.
53. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-05. Abbreviations.

The abbreviations used in this article have the following meanings:

A	-	ampere
A.S.T.M.	-	American Society for Testing and Materials
Btu	-	British thermal unit
°C	-	degree Celsius (centigrade)
cal	-	calorie
CdS	-	cadmium sulfide
cfm	-	cubic feet per minute
CFR	-	Code of Federal Regulations
cu ft	-	cubic feet
CO	-	carbon monoxide
CO ₂	-	carbon dioxide
dcf	-	dry cubic feet

dcm	-	dry cubic meter
dscf	-	dry cubic feet at standard conditions
dscm	-	dry cubic meter at standard conditions
eq	-	equivalents
°F	-	degree Fahrenheit
ft	-	feet
g	-	gram
gal	-	gallon
g eq	-	gram equivalents
gr	-	grain
hr	-	hour
HCl	-	hydrochloric acid
Hg	-	mercury
H ₂ O	-	water
H ₂ S	-	hydrogen sulfide
H ₂ SO ₄	-	sulfuric acid
Hz	-	hertz
in.	-	inch
j	-	joule
°K	-	degree Kelvin
k	-	1,000
kg	-	kilogram
l	-	liter
lpm	-	liter per minute
lb	-	pound
m	-	meter
m ³	-	cubic meter
meq	-	milliequivalent
min	-	minute
mg	-	milligram - 10 ⁻³ gram
Mg	-	megagram - 10 ⁶ gram
ml	-	milliliter - 10 ⁻³ liter
mm	-	millimeter - 10 ⁻³ meter
mol	-	mole
mol.wt.	-	molecular weight
mV	-	millivolt
N ₂	-	nitrogen

N	-	newton
ng	-	nanogram - 10 ⁻⁹ gram
nm	-	nanometer - 10 ⁻⁹ meter
NO	-	nitric oxide
NO ₂	-	nitrogen dioxide
NO _x	-	nitrogen oxides
O ₂	-	oxygen
Pa	-	pascal
PM	-	particulate matter
PM _{2.5}	-	particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers
PM ₁₀	-	particulate matter with an aerodynamic diameter less than or equal to <u>a nominal</u> 10 micrometers
ppb	-	parts per billion
ppm	-	parts per million
psia	-	pounds per square inch absolute
psig	-	pounds per square inch gauge
°R	-	degree Rankine
s-sec	-	second
scf	-	cubic feet at standard conditions
scfh	-	cubic feet per hour at standard conditions
scm	-	cubic meters at standard conditions
scmh	-	cubic meters per hour at standard conditions
SO ₂	-	sulfur dioxide
SO ₃	-	sulfur trioxide
SO _x	-	sulfur oxides
sq ft	-	square feet
std	-	at standard conditions
TSP	-	total suspended particulate
µg	-	microgram - 10 ⁻⁶ gram
V	-	volt
W	-	watt
Ω	-	ohm

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-02

TABLE 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)
Inhalable Particulates PM ₁₀	150 micrograms per cubic meter, 24-hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is equal to or less than one.
PM _{2.5}	12.0 micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the <u>3-year average of the annual arithmetic</u> -mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 12.0 micrograms per cubic meter. 35 micrograms per cubic meter 24-hour average concentration. The standard is met when the <u>3-year average of the annual 98th</u> percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.
Sulfur Dioxide	0.075 parts per million (196 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 99 th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.075 parts per million, as determined in accordance with 40 CFR 50, Appendix T. 0.5 parts per million (1,309 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year.
Hydrogen Sulfide	10.0 parts per million (14 milligrams per cubic meter of air), maximum instantaneous (ceiling) concentration not to be exceeded. 0.20 parts per million (280 micrograms per cubic meter of air), maximum 1-hour average concentration not to be exceeded more than once per month. 0.10 parts per million (140 micrograms per cubic meter of air), maximum 24-hour average concentration not to be exceeded more than once per year. 0.02 parts per million (28 micrograms per cubic meter of air), maximum arithmetic mean concentration averaged over three consecutive months.
Carbon Monoxide	9 parts per million (10 milligrams per cubic meter of air), maximum 8-hour concentration not to be exceeded more than once per year. 35 parts per million (40 milligrams per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year.
Ozone	0.070 parts per million (137 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the 3-year average of the annual fourth-highest daily maximum 8-hour average concentration at an ambient air quality monitoring site is less than or equal to 0.075 <u>0.070</u> ppm, as determined in accordance with 40 CFR 50, Appendix P.

Air Contaminants	Standards (Maximum Permissible Concentrations)
Nitrogen Dioxide	0.053 parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean.
	0.100 parts per million (188 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 98 th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 parts per million, as determined in accordance with 40 CFR 50, Appendix S.
Lead	0.15 micrograms per cubic meter of air, arithmetic mean averaged over a 3-month rolling period. The standard is met when the maximum 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.

History: Effective January 1, 2019; [amended effective July 1, 2020.](#)

CHAPTER 33.1-15-03
RESTRICTION OF ~~EMMISSION~~EMISSION OF VISIBLE AIR CONTAMINANTS

Section

- 33.1-15-03-01 Restrictions Applicable to Existing Installations
- 33.1-15-03-02 Restrictions Applicable to New Installations and All Incinerators
- 33.1-15-03-03 Restrictions Applicable to Fugitive Emissions
- 33.1-15-03-03.1 Restrictions Applicable to Flares
- 33.1-15-03-04 Exceptions
- 33.1-15-03-05 Method of Measurement

CHAPTER 33.1-15-12

33.1-15-12-01.1. 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 July 1, ~~2015~~2019, which are listed under section 33.1-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard. Reference to part 60 within the subparts means this chapter.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-12-02. 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 administrator of the United States environmental protection agency or the administrator's authorized representative.

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.~~

~~*60.39e(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, for the emission guidelines promulgated on September 15, 1997, and not later than October 6, 2014, for the emission guidelines promulgated on October 6, 2009, 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, within six months after the United States environmental protection agency's approval of the state plan, submit:
 - ~~i. 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, for the emission guidelines promulgated on September 15, 1997. For the amended emission guidelines published on October 6, 2009, compliance with the applicable requirements shall be attained on or before the date three years after United States environmental protection agency approval of the amended state plan but not later than October 6, 2014.~~

~~*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 Cf - Emission guidelines and compliance times for municipal solid waste landfills

For purposes of this subpart, a state plan implementing subpart Cc of this part means the North Dakota section 111(d) plan for municipal solid waste landfills that implements the requirements of subpart Cc of this chapter.

*60.30f(a) is deleted.

*60.30f(b) is deleted.

*60.30f(c) - The first sentence is deleted and replaced with the following:

The following authorities will be retained by the United States environmental protection agency.

60.31f(c) is deleted and replaced with the following:

(c) For purposes of obtaining a title V permit to operate, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirements to obtain a title V permit to operate under section 33.1-15-14-06 unless the landfill is otherwise subject to section 33.1-15-14-06. For submitting a timely application for a title V permit to operate, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters on the effective date of the United States environmental protection agency's approval of North Dakota's plan under section 111(d) of the federal clean air act, and not otherwise subject to the requirements of section 33.1-15-14-06, becomes subject to the requirements of subparagraph 33.1-15-14-06.4.a(1)(a) ninety days after the effective date of such section 111(d) approval, even if the design capacity report is submitted earlier.

60.31f(d) - The first sentence is deleted and replaced with the following:

(d) When a municipal solid waste landfill subject to this subpart is closed as defined in this subpart, the owner or operator is no longer subject to the requirement to maintain a title v permit to operate under section 33.1-15-14-06 for the landfill if the landfill is not otherwise subject to the requirements of section 33.1-15-14-06 and either of the following are met:

*60.33f(a) - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill subject to the provisions of this subpart and having a design capacity greater than or equal to 2.5 million megagrams by mass and 2.5 million cubic meters by volume shall collect and control municipal solid waste landfill emissions at each municipal solid waste landfill that meets the following conditions:

*60.33f(b) - The first sentence is deleted and replaced by the following:

Each owner or operator of a municipal solid waste landfill shall install a gas collection and control system which meets the requirements in paragraph(b)(1) through (3) and (c) of this section at each municipal solid waste landfill meeting the conditions in paragraph (a) of this section.

*60.33f(c) - The first sentence is deleted and replace with the following:

Each owner or operator of a municipal solid waste landfill subject to the provisions for the control of the gas collected from within the landfill through the use of control devices shall comply with the following requirements, except as provided in section 60.24.

*60.33f(d) - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the department as provided in section 60.38f(a).

*60.33f(e) - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters shall either install a collection and control system as provided in paragraphs (b) and (c) of this section or calculate an initial nonmethane organic compounds emission rate for the landfill using the procedures specified in section 60.35f(a).

*60.34f - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill subject to provisions of this subpart shall comply with the applicable provisions of the operational standards in this section for a municipal solid waste landfill with a gas collection and control system used to comply with the provisions of section 60.33f(b) and (c).

*60.35f - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill subject to the provisions of this subpart shall comply with the applicable provisions in this section to calculate the landfill nonmethane organic compounds emission rate or to conduct a surface emission monitoring demonstration.

Other methods for determining the NMOC concentration or site-specific methane generation constant must be approved by the environmental protection agency administrator.

*60.36f - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the applicable compliance provisions in this section.

*60.37f - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the applicable monitoring provisions in this section, except as provided in 60.38f(d)(2).

*60.38f - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the reporting provisions listed in this section, as applicable, except as provided by section 60.24 and 60.38f(d)(2).

*60.38f(a)(2) - In this subparagraph, administrator means the administrator of the United States environmental protection agency or the administrator's authorized representative.

*60.38f(d) - The first sentence is deleted and replaced with the following:

The department shall review and approve the site-specific design plan for each gas collection and control system as outlined in the 111(d) plan for municipal solid waste landfills subject to the provisions of this subpart.

*60.39f - The first sentence is deleted and replaced with the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart shall comply with the applicable recordkeeping provisions in this section.

*60.40f - The first sentence is deleted and replace by the following:

Each owner or operator of a municipal solid waste landfill that is subject to the provisions of this subpart and required to install an active collection system shall comply with the applicable specifications for active collection systems in this section.

*60.41f - 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, the administrator means the administrator of the United States environmental protection agency or the administrator's authorized representative.

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.

*The limits and other requirements for mercury are deleted.

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 Ja - Standards of performance for petroleum refineries for which construction, reconstruction, or modification commenced after May 14, 2007.

Those portions of the subpart that have been stayed are not adopted.

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 O - Standards of performance for sewage treatment 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 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 VVa - Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after November 7, 2006.

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 GGGa - Standards of performance for equipment leaks of VOC in petroleum refineries for which construction, reconstruction, or modification commenced after November 7, 2006.

Those portions of the subpart that are stayed are not adopted.

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; SO₂ emissions.

Subpart MMM - [Reserved]

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 XXX - Standards of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification after July 17, 2014.](#)

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.

Subpart DDDD - Emission guidelines and compliance times for commercial and industrial solid waste incineration units.

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 9.

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	
CISWI Units That Commenced Construction on or Before November 30, 1999	
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.

Incinerator CISWI units that commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001, but no later than August 7, 2013. CISWI units other than incinerator units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013.	
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 February 7, 2017, whichever comes first.
Increment 2—Final compliance	Three years after EPA approval of the state plan or February 7, 2018, whichever comes first.

Subpart GGGG - [Reserved]

Subpart IIII - Standards of performance for stationary compression ignition internal combustion engines.

Subpart JJJJ - Standards of performance for stationary sparks ignition internal combustion engines.

Subpart KKKK - Standards of performance for stationary combustion turbines.

Subpart OOOO - Standards of performance for crude oil and natural gas production, transmission, and distribution for which construction, modification, or reconstruction commenced after August 23, 2011, and on or before September 18, 2015.

Subpart OOOOa - Standards of performance for crude oil and natural gas facilities for which construction, modification, or reconstruction commenced after September 18, 2015.

Subpart TTTT - Standards of performance for greenhouse gas emissions for electric generating units.

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 January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-14

33.1-15-14-01.1. Definitions.

For the purposes of this chapter:

1. "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
2. "Construction, installation, or establishment" means:
 - a. For sources subject to a standard or requirement under chapters 33.1-15-13, 33.1-15-15 (excluding increment consumption by nonmajor sources), and 33.1-15-22, it shall have the meaning given for construction in each of the respective chapters.
 - b. For all other sources it means the onsite placement or erection, including onsite fabrication, demolition, or modification, of an air contaminant emissions unit and any equipment, process, or structure that will be used to reduce, physically or chemically change, or transmit to the atmosphere any air contaminant. This does not include the building that houses the source, site work, foundations, or other equipment which does not affect the amount, ambient concentration, or type of air contaminants that are emitted. With respect to a physical change or a change in the method of operation it means those onsite activities which will affect an existing emissions unit or establishment of a new unit that emits to the atmosphere.
3. "Emissions unit" has the meaning given to it in section 33.1-15-14-06.
4. "Minor source" means any designated air contaminant source under section 33.1-15-14-01 which is not required to obtain a title V permit to operate under section 33.1-15-14-06.
5. "Potential to emit" has the meaning given to it in section 33.1-15-14-06.
6. "Stationary source" has the meaning given to it in section 33.1-15-14-06.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-14-02. Permit to construct.

1. **Permit to construct required.**
 - a. No construction, installation, or establishment of a new stationary source within a source category designated in section 33.1-15-14-01 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.
 - b. The initiation of activities that are exempt from the definition of construction, installation, or establishment in section 33.1-15-14-01.1, 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.
 - c. General permits. The department may issue a general permit to construct covering numerous similar sources which are not subject to permitting requirements under chapter 33.1-15-13 or 33.1-15-15 or subpart B of section 33.1-15-22-03. Any general permit shall

comply with all requirements applicable to other permits to construct and shall identify criteria by which sources may qualify for the general permit. A proposed general permit, any changes to a general permit, and any renewal of a general permit is subject to public comment. The public comment procedures under subdivision b of subsection 6 shall be used. To sources that qualify, the department shall grant the conditions and terms of the general permit. Sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or apply for an individual permit to construct. Without repeating the public participation procedures under subdivision b of subsection 6, the department may grant a source's request for authorization to construct under the general permit.

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 33.1-15-02-07 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 air quality). These documents are incorporated by reference~~ it exists on July 1, 2019.

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 27709).

(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 an 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:

<u>Contaminant</u>	<u>Averaging Time (hours)</u>				
	Annual (µg/m ³)	24 (µg/m ³)	8 (µg/m ³)	3 (µg/m ³)	1 (µg/m ³)
SO ₂	1.0	5		25	7.8
PM ₁₀		5			
NO ₂	1.0				7.5
CO			500		2000
PM _{2.5}	0.3 <u>0.2</u>	1.2			
<u>Ozone</u>			<u>2.0</u>		

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 33.1-15-13.
- (2) New sources that will be required to obtain a permit to operate under section 33.1-15-14-06.
- (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 or on the department's website, 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 33.1-15-15, the public participation procedures under section 33.1-15-15-01.2 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 ~~er~~and 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.
- 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 33.1-15-15, 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 33.1-15-02 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) Any internal combustion engine, or multiple engines at the same facility, with a total combined actual emission rate of five tons [4.54 metric tons] per year or less of any air contaminant for which an ambient air quality standard has been promulgated in section 33.1-15-02-04.
 - (4) The exemptions listed in paragraphs 1, 2, and 3 do not apply to engines that are a utility unit as defined in section 33.1-15-21-08.1.
 - 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 requirements of chapter 33.1-15-12.
- 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 33.1-15-04-02.
- 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 33.1-15-20 which are not a major source as defined in section 33.1-15-14-06.

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 33.1-15-15 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 33.1-15-15, the department shall follow the procedures established in chapter 33.1-15-15. 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 33.1-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-06-04, 23.1-06-08, 23.1-06-09; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-08, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-14-06. 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 IV of the federal Clean Air Act.
- d. "Alternative operating scenario (AOS)" means a scenario authorized in a title V permit that involves a change at the title V source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.
- e. "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.

- f. "Approved replicable methodology (ARM)" means title V permit terms that:
- (1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this section, such that the protocol is based on sound scientific or mathematical principles, or both, and provides reproducible results using the same inputs; and
 - (2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the approved replicable methodology, or requirement of this section, including where an approved replicable methodology is used for determining applicability of a specific requirement to a particular change.
- g. "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.
- h. "Draft permit" means the version of a permit for which the department offers public participation or affected state review.
- i. "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.
- j. "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.
- k. "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.
- l. "Environmental protection agency" or the "administrator" means the administrator of the United States environmental protection agency or the administrator's designee.
- m. "Federal Clean Air Act" means the federal Clean Air Act, as amended [42 U.S.C. 7401 et seq.].
- n. "Final permit" means the version of a title V permit issued by the department that has completed all review procedures required in this section.
- o. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

- p. "General permit" means a title V permit to operate that meets the requirements of subdivision d of subsection 5.
- q. "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 subject to regulation (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). For purposes of this definition, air contaminant subject to regulation does not include greenhouse gases as defined in title 40 Code of Federal Regulations 86.1818-12(a). 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.
- r. "Permit modification" means a revision to a title V permit that meets the requirements of subdivision e of subsection 6.
 - s. "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).
 - t. "Permit revision" means any permit modification or administrative permit amendment.
 - u. "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.

- v. "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.
- w. "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.
- x. "Regulated contaminant" for fee calculation, which is used only for chapter 33.1-15-23, 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.
 - (4) Greenhouse gases.
- y. "Renewal" means the process by which a permit is reissued at the end of its term.
- z. "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.
- aa. "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.
- bb. "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.
- cc. "Subject to regulation" means, for any air contaminant, that the air contaminant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator of the United States environmental protection agency in title 40 Code of Federal Regulations chapter I, subchapter C, that requires actual control of the quantity of emissions of that air contaminant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that air contaminant release from the regulated activity.
- dd. "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.
- ee. "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 33.1-15-14-03.
 - (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 33.1-15-14-02 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 33.1-15-14-02, 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 33.1-15-23-04. 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 those associated with any proposed alternative operating 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 and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tons per year can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine or assure compliance with, or both, an applicable requirement.
 - (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 33.1-15-18.
 - (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) Additional information as determined to be necessary by the department to define proposed alternative operating scenarios identified by the source pursuant to paragraph 9 of subdivision a of subsection 5 or to define permit terms and conditions implementing any alternative operating scenario under paragraph 9 of subdivision a of subsection 5 or implementing paragraph 2 of subdivision b of subsection 6, paragraph 3 of subdivision b of subsection 6, paragraph 8 of subdivision a of subsection 5, or paragraph 10 of subdivision a of subsection 5. The permit application shall include documentation demonstrating that the source has obtained all authorizations required under the applicable requirements relevant to any proposed alternative operating scenarios, or a certification that the source has submitted all relevant materials to the department for obtaining such authorizations.
- (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.
 - [4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
- (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.
 - [4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement 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 will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
- (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. Such requirements and limitations may include approved replicable methodologies identified by the source in its title V permit application as approved by the department, provided that no approved replicable methodology shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this section or circumvent any applicable requirement that would apply as a result of implementing the approved replicable methodology.
 - (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. For all sources, the term of the permit may not exceed five years. The permit expires on the date listed on the permit.
- (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 33.1-15-01 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 33.1-15-23.
 - (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 alternative 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 alternative operating scenario under which it is operating;
 - (b) Shall extend the permit shield described in subdivision f to all terms and conditions under each such alternative 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. The department shall not approve a proposed alternative operating scenario into the title V permit until the source has obtained all authorizations required under any applicable requirement relevant to that alternative operating scenario.
 - (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. 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, including whether compliance during the period was continuous or intermittent. The certification shall be 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 33.1-15-01-13 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 33.1-15-14-02.
- 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 33.1-15-12, 33.1-15-13, and 33.1-15-15 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 33.1-15-14-02 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 33.1-15-12, 33.1-15-13, and 33.1-15-15 or any provision of title I of the federal Clean Air Act.
- (f) A permit to construct under section 33.1-15-14-02 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 33.1-15-14-02 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 33.1-15-12, 33.1-15-13, and 33.1-15-15 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~~must 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~~posting the notice on the department's website. The draft permit must be posted for the duration of the public comment period. The department also shall notify, using generally accepted methods, 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. The department may update the mailing list from time-to-time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request within a reasonable timeframe;
 - (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 database 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 28-32-42 may obtain judicial review provided such appeal is filed in accordance with North Dakota Century Code section 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 time frames referenced in this section shall be appealable in accordance with North Dakota Century Code section 28-32-42. A petition for judicial review may be filed any time before the department denies the permit or issues the final permit.
- 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 time frames 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.
- f. Petitions for judicial review of final permit actions may be filed after the deadline in North Dakota Century Code section 23.1-01-11, only if the petitions are based solely on grounds arising after the deadline for judicial review. Such petitions must be filed no later than thirty days after the new grounds for review arise.

- 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 July 2, 2010, 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 or the administrator's authorized representative.

- b. "Part 70 permit" means a title V permit to operate.
- c. "Permitting authority" means the department.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04, 23.1-06-08, 23.1-06-09, 23.1-06-10; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04, 23.1-06-08, 23.1-06-09, 23.1-06-10; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-15

33.1-15-15-01.2. Scope.

The provisions of title 40 Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa), and (bb) as they exist on July 1, ~~2018~~2019, are incorporated by reference into this chapter. This includes revisions to the rules that were published as a final rule in the Federal Register by this date but had not been published in the Code of Federal Regulations yet. 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 or the administrator's authorized representative:

(b)(17) - Definition of federally enforceable.

(b)(37)(i) - Definition of repowering.

(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.

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 33.1-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33.1-15-14-02, 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)(1) The following is added:

For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).

40 CFR
52.21(b)(2) The following is added:

For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).

40 CFR 52.21(b)
(2)(iii)(a) The following is deleted:

Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc).

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) The following is added:

(14)

- (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.

40 CFR 52.21(b) The following is added:

(15)

- (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) The following is added:

(23)(i)

Greenhouse gases: 75,000 tpy CO₂ equivalent.

40 CFR 52.21(b) The following is added:

(22)

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) The following is added:

(29)

This term does not include effects on integral vistas.

40 CFR 52.21(b) The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".

40 CFR 52.21(b) The paragraph is deleted in its entirety and replaced with the following:

(43)

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) The following words are deleted:

(48)(ii)

"by the administrator for a permit required under this section or".

40 CFR 52.21(b) The following words are deleted "administrator in subchapter C of this chapter" and

(49)

replaced with the following:

Administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I subchapter C.

40 CFR 52.21(b) "§ 86.181-12(a) of this chapter" is deleted and replaced with: 40 CFR

(49)(i)

86.1818-12(a).

40 CFR 52.21(b) "Table A-1 to subpart A of part 98 of this chapter" is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1.

(49)(ii)(a)

The following is deleted:

For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products,

byproducts, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

40 CFR 52.21(b) This paragraph is deleted in its entirety and replaced with the following:
(50)(i)(c)

Nitrogen oxides are a precursor to PM_{2.5} in all attainment and unclassifiable areas.

40 CFR 52.21(b) This paragraph is deleted in its entirety and replaced with the following:
(50)(i)(d)

Volatile organic compounds are not a precursor to PM_{2.5} in any attainment or unclassifiable areas.

40 CFR 52.21(b) The paragraph is deleted in its entirety and replaced with the following:
(51)

Reviewing authority means the department.

40 CFR 52.21(b) This paragraph is deleted in its entirety and replaced with the following:
(53)

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) This paragraph is deleted in its entirety and replaced with the following:
(54)

Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.

40 CFR 52.21(b) This paragraph is deleted in its entirety.
(58)

40 CFR 52.21(d) The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed:

- (1) The concentration permitted under the national primary and secondary ambient air quality standards.
- (2) The concentration permitted by the ambient air quality standards in chapter 33.1-15-02.

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 33.1-15-18.

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) This subparagraph is deleted and replaced with the following:
(1)

(i) Any national ambient air quality standard or any standard in chapter 33.1-15-02.

40 CFR 52.21(l) This subparagraph is deleted and replaced with the following:
(1)

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 July 1, 2018). 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(p) "paragraph (q)(4)" is replaced with "paragraph (p)(4)" and "(q)(7)" is replaced with "(p)(7)".
(6)

40 CFR 52.21(p) "paragraph (q)(7)" is replaced with "paragraph (p)(7)".
(7)

40 CFR 52.21(p) "paragraphs (q)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)".
(8)

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) With respect to a completed application, the department shall:

(a) Within one year after receipt, 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 or on the department's website, 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~~ a notice on the department's website, of the application, the preliminary determination, draft permit to construct, 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's website must be used for all permits subject to notice under this subdivision. The notices required by this subparagraph must be available for the duration of the public comment period. The notification must include information on how to access the administrative record and how to request and/or attend the public hearing. 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 thirty 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 may extend the time to respond to comments based on a written request by the applicant. 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 national ambient air quality standard or any ambient air quality standard in chapter 33.1-15-02; or

40 CFR 52.21(aa)(15)

This paragraph is deleted in its entirety.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-19

33.1-15-19-01. General provisions.

1. **Applicability.** The provisions of this chapter apply to the owner or operator of a major stationary source or major modification, as defined in section ~~33.1-15-15-01~~33.1-15-15-01.2, whose construction or modification is commenced after August 12, 1985. The standards shall be applied in conjunction with the procedures set forth in chapters 33.1-15-12, 33.1-15-14, and 33.1-15-15.
2. **Definitions.** As used in this chapter, all terms not defined herein shall have the meaning given them in section 33.1-15-01-04, 33.1-15-12-01, or ~~33.1-15-15-01~~33.1-15-15-01.2 or in North Dakota Century Code chapter 23.1-06.
 - a. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with times of visitor use of the federal class I area, and the frequency and timing of natural conditions that reduce visibility.
 - b. "Natural conditions" include naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.
 - c. "Visibility impairment" means any humanly perceptible change in visual range, contrast, or coloration from that which would have existed under natural conditions.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-20

33.1-15-20-04. Requirements for control of production facility emissions.

1. The emissions from all treaters, separators, engines, incinerators, flares, tanks, and other onsite equipment must comply with the requirements of subsection 5.
2. Each flare used for ~~treating gas containing hydrogen sulfide (H₂S)~~, combusting gas at a production facility must be equipped and operated with an automatic ignitor or a continuous burning pilot which must be maintained and operated in good working order. This is required even if the flare is used for emergency purposes only. A continuous burning pilot is required if this department determines that an automatic ignition system is ineffective due to production characteristics. The flare stack must be of sufficient height to allow for adequate dispersion of ~~sulfur dioxide (SO₂)~~ air contaminants as necessary to meet the requirements of this article.
3. Any ~~volatile~~ organic compound ~~gas or vapor~~ gases and vapors may be subject to controls as specified in chapter 33.1-15-07.
4. Routine inspections and maintenance of tanks, hatches, compressors, vent lines, pressure relief valves, packing elements, and couplings must be conducted to minimize emissions from equipment ~~used for gas containing hydrogen sulfide (H₂S)~~ at a production facility. Tank hatches must hold a positive working pressure or must be repaired or replaced.
5. The owner or operator of any oil or gas well production facility shall install equipment necessary to ensure that emissions comply with the ambient air quality standards of chapter 33.1-15-02, including hydrogen sulfide and sulfur dioxide; the class I and class II increments for sulfur dioxide, nitrogen dioxide, and particulate matter of chapter 33.1-15-15, if applicable; the odor concentration limits of chapter 33.1-15-16; and any other applicable chapter of this article. For the purpose of this chapter, compliance must be determined outside the surface boundary of the production facility.
6. When a malfunction, the correction of a malfunction, or maintenance at any oil and gas well production facility occurs that can be expected to cause the emission of air contaminants in violation of this article for longer than twenty-four hours, the person responsible for such installation shall notify the department of such malfunction or maintenance as set forth in section 33.1-15-01-13. This subsection pertains only to the reporting of malfunctions and maintenance and does not obviate the source's responsibility to comply with the remainder of this chapter or article.
7. The owner or operator of any oil and gas well production facility completed prior to the effective date of section 33.1-15-20-04 shall comply with the requirements of this chapter within six months of the effective date of these revisions. The owner or operator of any oil and gas well production facility completed after the effective date of the revisions to section 33.1-15-20-04 shall comply with the requirements of this chapter within ninety days of the completion of the well.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-22

33.1-15-22-01. Scope.

The subparts and appendices of title 40 Code of Federal Regulations part 63, as they exist on July 1, ~~2015~~2019, which are listed in section 33.1-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-22-03. 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 CC - National emissions standards for hazardous air pollutants from petroleum refineries.

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.

*Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

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 EEEE - National emission standards for hazardous air pollutants: organic liquids distribution (nongasoline).

Subpart FFFF - National emission standards for hazardous air pollutants: miscellaneous organic chemical manufacturing.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart JJJJ - National emission standards for hazardous air pollutants for brick and structural clay products manufacturing.

Subpart MMMM - National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.

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 YYYY - National emission standards for hazardous air pollutants for stationary combustion turbines.

Subpart ZZZZ - National emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines.

*Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart DDDDD - National emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters.

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

Subpart UUUUU - National emission standards for hazardous air pollutants: coal-fired and oil-fired electric utility steam generating units.

Subpart JJJJJ - National emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers area sources.

*Only the requirements that are applicable to boilers with a heat input of ten million Btu per hour or more are adopted.

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 January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-25 REGIONAL HAZE REQUIREMENTS

Section

- 33.1-15-25-01 Definitions
33.1-15-25-02 Best Available Retrofit Technology
33.1-15-25-03 ~~[Reserved]~~ Emission Reduction Measures Required to Make Reasonable Progress Toward the National Visibility Goal
33.1-15-25-04 Monitoring, Recordkeeping, and Reporting

33.1-15-25-03. ~~[Reserved]~~ Emission reduction measures required to make reasonable progress toward the national visibility goal.

The owner or operator of an existing stationary source, or group of sources, shall implement emission reduction measures to make reasonable progress, as determined in accordance with title 40, Code of Federal Regulations, part 51, section 308, when required in a state implementation plan revision developed by the department. The measures shall be implemented within a reasonable timeframe after the United States environmental protection agency's approval of North Dakota's state implementation plan revision. The measures and compliance deadline shall be determined on a source-by-source basis and shall be included in North Dakota's state implementation plan revision. All required measures shall be properly operated and maintained.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-25-04. Monitoring, recordkeeping, and reporting.

The owner or operator of any existing stationary ~~facility~~source, or group of sources, that ~~is~~are required to install best available retrofit technology, or emission reduction measures to meet the reasonable progress goals, shall conduct monitoring, recordkeeping, and reporting sufficient to show compliance or noncompliance. Monitoring for sulfur dioxide and nitrogen oxides from the main stack of a fossil-fuel-fired steam electric plant shall be conducted using continuous emissions monitoring systems which comply with the requirements of section 33.1-15-21-09. Particulate monitoring shall be in accordance with the requirements of subsection 10 of section 33.1-15-14-06. Recordkeeping and reporting shall comply with the requirements of section 33.1-15-14-06. Monitoring, recordkeeping, and reporting for other source units shall comply with the requirements of section 33.1-15-14-06.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

ARTICLE 33.1-20
SOLID WASTE MANAGEMENT AND LAND PROTECTION

Chapter

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CHAPTER 33.1-20-01.1

33.1-20-01.1-03. Definitions.

The terms used throughout this ~~title~~ article have the same meaning as in North Dakota Century Code chapter 23.1-08, except:

1. "Acre foot" means the volume of one acre [0.40 hectares] of surface area to a depth of one foot [30.5 centimeters].
2. "Agricultural processing operation" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.
- ~~2.~~3. "Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.
- ~~3.~~4. "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

- ~~4-5.~~ "Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.
- ~~5-6.~~ "Area-capacity curves" means graphic curves that readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.
7. "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the solid waste management unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.
8. "Beneficial use" means use of a solid waste or residual either in a manufacturing process to make a product or as a substitute for a raw material or product provided such use of the solid waste does not adversely impact human health or the environment. Beneficial use of CCR must meet the conditions in subdivisions a through d and beneficial use of other solid wastes or residuals must meet conditions in subdivisions a through c.
- a. The solid waste or residual must provide a functional benefit;
- b. The solid waste or residual must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;
- c. The use of the solid waste or residual must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the solid waste or residual is not used in excess quantities; and
- d. When unencapsulated use of CCR or residual involving placement on the land of twelve thousand four hundred tons or more in nonroadway applications, the user shall demonstrate and keep records, and provide such documentation upon request, that environmental releases to ground water, surface water, soil and air are comparable to or lower than those from analogous products made without solid waste or residual, or that environmental releases to ground water, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.
9. "Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste for which closure is complete.
- ~~6-10.~~ "Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.
- ~~7-11.~~ "Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. Coal combustion residuals is a subset of special waste.
12. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities exclusive of household waste, industrial waste, and special waste.

- ~~8.13.~~ "Compliance boundary" means the vertical planar surface that extends downward into the uppermost aquifer and that circumscribes the waste management units at which water quality standards or maximum concentration limits apply.
- ~~9.14.~~ "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.
- ~~40.15.~~ "Contouring" means the placement of material to provide a continuous downward slope on the surface of a drainage area, except for erosion control features (e.g., swales, contour banks).
- ~~16.~~ "Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "rolloffs").
- ~~44.17.~~ "Dike" means an embankment, berm, or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.
- ~~18.~~ "Displacement" means the relative movement of any two sides of a fault measured in any direction.
- ~~19.~~ "Downstream toe" means the junction of the downstream slope or face of the surface impoundment with the ground surface.
- ~~20.~~ "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading, and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive solid waste from off-site.
- ~~12.~~ "Energy conversion facility" has the same meaning as in North Dakota Century Code subsection 5 of section 49-22-03, except that refining of liquid hydrocarbon products is excluded.
- ~~21.~~ "Encapsulated beneficial use" means a beneficial use of solid waste that binds the solid waste into a solid matrix that minimizes its mobilization into the surrounding environment.
- ~~22.~~ "Engineered slope protection measures" means nonvegetative cover systems, which include rock riprap, concrete revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.
- ~~43.23.~~ "Existing unit" means a landfill or surface impoundment or a portion thereof that is receiving or has received solid waste for which closure has not been completed.
- ~~44.24.~~ "Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.
- ~~45.25.~~ "Factor of safety (safety factor)" means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.
- ~~26.~~ "Farming operation" means the production or raising of crops or livestock. Production or raising of crops or livestock includes the following:
- a. Cultivating, growing, or harvesting agricultural crops;
 - b. Breeding, feeding, grazing, or finishing of livestock; or

- c. Raising or producing poultry or unprocessed poultry products, unprocessed milk or dairy products, unprocessed livestock products such as wool, or unprocessed fruits, vegetables, or other horticultural products.

The term "farming operation" includes any ~~concentrated or confined~~ animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03.1 that recycles or applies its manure and other residual agricultural material to soils as recycled agricultural material, but does not include ~~a concentrated or confined~~ an animal feeding operation that generates manure or other residual agricultural material that is discarded as agricultural waste. The term "farming operation" does not include any processing of crops, livestock, or other agricultural products by an agricultural processing operation.

- ~~16-27.~~ "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.
- 28. "Final cover" means any combination of compacted or uncompacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.
- ~~17-29.~~ "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by an one hundred-year flood.
- ~~18-30.~~ "Flood hydrograph" means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.
- 31. "Freeboard" means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.
- 32. "Free liquid" means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The environmental protection agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.
- ~~19-33.~~ "Fugitive dust" means solid airborne particulate matter that contains or is derived from solid waste, emitted from any source other than a stack or chimney.
- 34. "Garbage" means putrescible solid waste such as animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, and processing plants.
- ~~20-35.~~ "Gas condensate" means the liquid generated as a result of gas recovery processes at a landfill disposal unit.
- ~~24-36.~~ "General permit" means a regional or statewide permit issued by the department for a specified category of beneficial use, processing or treatment of solid waste, the terms and conditions of which allow a person to operate under the permit if the terms and conditions of the permit and requirements of this article are met.
- 37. "Grassy vegetation" means vegetation that creates a continuous dense cover that prevents erosion and deterioration of the surface of the slope or pertinent surrounding areas, thereby preventing deterioration of the surface and develops shallow roots that do not penetrate the slopes or pertinent surrounding areas of the solid waste unit to a substantial depth and do not introduce the potential of internal erosion or risk of uprooting.

38. "Ground water" means water below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
- ~~22-39~~ "Hazardous waste" has the meaning given by North Dakota Century Code section 23.1-04-02 and further defined in North Dakota Administrative Code chapter 33.1-24-02.
- 23-40. "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at eleven thousand seven hundred years before present, to present.
41. "Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.
- 24-42. "Hydraulic conductivity" means the rate at which water can move through a permeable medium (i.e., the coefficient of permeability).
43. "Incinerator" has the meaning given by section 33.1-15-01-04.
- ~~25-44.~~ "Incised surface impoundment" means a surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of solid waste entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.
45. "Industrial waste" has the same meaning as in North Dakota Century Code section 23.1-08-02. Such waste may include residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; textile manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.
- ~~26-46.~~ "Inert waste" means nonputrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; metal; tree branches; bottom ash from coal-fired boilers that is not CCR; and waste coal fines from air pollution control equipment.
- ~~27-47.~~ "Inflow design flood" means the flood hydrograph that is used in the design or modification of the surface impoundments and its appurtenant works.
48. "Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.
- ~~28-49.~~ "Landfill" has the meaning given by North Dakota Century Code section 23.1-08-02 and that is not a land treatment unit, surface impoundment, injection well, or waste pile.
- ~~29-50.~~ "Lateral expansion" means a horizontal extension of the waste boundaries of an existing landfill solid waste disposal unit. This applies to an existing CCR landfill or existing CCR surface impoundment for lateral expansions made after October 19, 2015.
- ~~30-51.~~ "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

~~31.52.~~ "Leachate removal system" means any combination of landfill base slopes, liners, permeable zones, pipes, detection systems, sumps, pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.

~~32.53.~~ "Liquefaction factor of safety" means the factor of safety (safety factor) determined using analysis under liquefaction conditions.

~~54.~~ "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include manmade materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

~~55.~~ "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees Celsius [77 degrees Fahrenheit].

~~33.56.~~ "Municipal waste incinerator ash" means the residue produced by the incineration or gasification of municipal waste.

~~34.57.~~ "Nutrient management plan" means a plan prepared by any ~~concentrated or confined~~ animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03, or by any agricultural processing operation. This plan shall be submitted to the department for approval and describe the method and schedule by which the recycled agricultural materials generated or stored by the operation are recycled or applied to the land at appropriate agronomic rates as nutrients or fertilizers, rather than discarded as agricultural waste. An approved nutrient management plan must address water pollution, odor, and other environmental and public health problems that are relevant because of size, location, or other environmental factors, and may include the following elements:

- a. Recycled agricultural material handling and storage, including construction and maintenance of buildings, feedlots, collection systems, storage systems with adequate storage and integrity, and diversion of runoff and flowing surface water from contact with the storage systems and the recycled agricultural material;
- b. Land application of recycled agricultural material, including soils testing, transportation, timing and methods of application, and nutrient management;
- c. Conservation management practices, including injection or tillage of the recycled agricultural materials into the soils, crop residue and pasture management practices, use of conservation buffers, and other conservation practices that prevent water pollution from land application of recycled agricultural materials;
- d. Recordkeeping and submittal of an annual report to the department, including the place, date, and amount of recycled agricultural material applied per acre, plus records of any testing;
- e. Feed management; and
- f. Other utilization options where residual agricultural materials are recycled.

~~35.58.~~ "Operator" means the person responsible for the overall operation of a facility or part of a facility.

~~36.59.~~ "Owner" means the person who owns a facility or part of a facility.

- ~~37.60.~~ "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.
- ~~38.61.~~ "Postclosure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform postclosure activities.
- ~~39.62.~~ "Probable maximum flood" means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.
- ~~63.~~ "Processing" means an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.
- ~~40.64.~~ "Qualified environmental professional" means a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases to the environment. Such a person must:
- a. Be licensed or certified by a nationally recognized accreditation program (contingent upon prior approval by the department) and have the equivalent of three years of full-time relevant experience; or
 - b. Have a baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five years of full-time relevant experience.
- ~~65.~~ "Qualified professional engineer" means a professional engineer, as defined in subsection 9 of North Dakota Century Code section 43-19.1-02, who is qualified by education, technical knowledge, and experience to make the specific technical certifications required under this article. Professional engineers making these certifications must be currently licensed in the state of North Dakota.
- ~~66.~~ "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33.1-10.
- ~~41.67.~~ "Recognized and generally accepted good engineering practices" means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.
- ~~68.~~ "Recyclable material" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.
- ~~42.69.~~ "Recycled agricultural material" means agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing, or other similar agricultural activities. Recycled agricultural materials also include:
- a. Material, including manure, generated by any ~~concentrated or confined~~ animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03 that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan; or

- b. Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan.

Recycled agricultural material does not include agricultural waste that is discarded as garbage, refuse, or other solid waste.

- ~~43.70.~~ "Recycling" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.
- ~~44.71.~~ "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon and ground water) which can be expected to exhibit the average properties of the universe or whole.
- ~~72.~~ "Runoff" means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.
- ~~45.73.~~ "Run-on" means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.
- ~~46.74.~~ "Sand and gravel pit or quarry" means an excavation for the extraction of aggregate, minerals, or metals. The term sand and gravel pit or quarry does not include subsurface or surface coal mines.
- ~~75.~~ "Scavenging" means uncontrolled removal of solid waste materials from any solid waste management facility.
- ~~47.76.~~ "Sequential partial closure" means bringing discrete, usually adjacent, portions of a disposal facility to elevation and grade in an orderly, continually progressing process as part of the operations of the facility for facilitating closure.
- ~~48.77.~~ "Sludge" means solid waste in a semisolid form consisting of a mixture of solids and water, oils, or other liquids.
- ~~49.78.~~ "Solid waste management unit" means any discernible unit at which solid wastes have been placed at any time, for the management of solid waste, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A solid waste management unit may consist of multiple components that serve the same function within a facility, such as multiple surface impoundments or waste holding tanks.
- ~~79.~~ "Static factor of safety" means the factor of safety (safety factor) determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.
- ~~80.~~ "Structural components" means liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood controls systems, and any other component used in the construction and operation of the solid waste management unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.
- ~~81.~~ "Suitable plant growth material" means that soil material (normally the A and the upper portion of B horizons which are dark colored due to organic staining) which, based upon a soil survey, is acceptable as a medium for plant growth when respread on the surface of regraded areas.

- ~~50-82.~~ "Surface impoundment" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of leachate, solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal.
- ~~51-83.~~ "Technologically enhanced naturally occurring radioactive material (TENORM)" means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.] and relevant regulations implemented by the United States nuclear regulatory commission.
- ~~52-84.~~ "Transfer station" means a site or building used to transfer solid waste from a vehicle or a container, such as a rolloff box, into another vehicle or container for transport to another facility.
- ~~53-85.~~ "Treatment" means a method or process designed to change the physical, chemical, or biological character or composition of a solid waste or leachate so as to neutralize the waste or leachate or so as to render the waste or leachate safer for public health or environmental resources during transport, storage, beneficial reuse, or disposal. The term does not include resource recovery.
- ~~54-86.~~ "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the solid waste management unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.
- ~~87.~~ "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.
- ~~88.~~ "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
- ~~55-89.~~ "Vegetative height" means the linear distance between the ground surface where the vegetation penetrates the ground surface and the outermost growth point of the vegetation.
- ~~90.~~ "Waste boundary" means a vertical surface located at the hydraulically downgradient limit of the solid waste management unit. The vertical surface extends down into the uppermost aquifer.
- ~~91.~~ "Waste pile or pile" means any noncontainerized accumulation of nonflowing solid waste.
- ~~92.~~ "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- ~~93.~~ "Woody vegetation" means vegetation that develops woody trunks, root balls, or root systems that can penetrate the slopes or pertinent surrounding areas of the solid waste unit to a substantial depth and introduce the potential of internal erosion or risk of uprooting.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03, 61-28-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 61-28-04; S.L. 2017, ch. 199, § 23

33.1-20-01.1-11. Industrial waste and special waste.

Every person who generates industrial waste or special waste or who operates a landfill for disposal of municipal waste, industrial waste, or special waste shall comply with this article and this section.

1. Industrial waste, except as provided by subsection 3:
 - a. May be codisposed with municipal waste in a municipal waste landfill in amounts less than or equal to ten percent by month of the weight of the municipal waste, except that the accumulated amount of industrial waste must not exceed twenty thousand tons [18,143.69 metric tons] per year or three thousand tons [2,721.55 metric tons] in any one month; or
 - b. May be disposed in a landfill which complies with chapter 33.1-20-07.1, except that the accumulated amount must not exceed twenty-five thousand tons [22,679.62 metric tons] per year or three thousand tons [2,721.55 metric tons] in any one month unless larger amounts in one month resulting from remediation of spills or cleanup projects are approved by the department; or
 - c. Otherwise must be disposed in a landfill which complies with chapter 33.1-20-10 when the amount exceeds twenty-five thousand tons [22,679.62 metric tons] per year.
2. The disposal of non-CCR special waste must comply with chapter 33.1-20-07.1 and the disposal of CCR must comply with chapter 33.1-20-08.
3. The disposal of municipal solid waste (MSW) incinerator ash in an accumulated amount greater than three thousand tons [2,721.55 metric tons] per year must comply with chapter 33.1-20-10.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-14. Variances.

Whereupon written application the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship or would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe. The department will not approve variances for CCR facilities without concurrence from the United States environmental protection agency.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-02.1
PERMIT PROVISIONS AND PROCEDURES

Section

- 33.1-20-02.1-01 Solid Waste Management Permit Required
- 33.1-20-02.1-02 Permits by Rule
- 33.1-20-02.1-03 ~~Permit Compliance~~ General Permits for Beneficial Use, Processing, or Treatment of Solid Waste
- 33.1-20-02.1-04 ~~Record of Notice~~ Permit Compliance
- 33.1-20-02.1-05 ~~Property Rights~~ Record of Notice
- 33.1-20-02.1-06 ~~Permit Modification, Suspension, or Revocation~~ Property Rights
- 33.1-20-02.1-07 Permit Modification, Suspension, or Revocation
- 33.1-20-02.1-08 Renewal of Permit

33.1-20-02.1-01. Solid waste management permit required.

Every person who treats or transports solid waste or operates a solid waste management unit or facility is required to have a valid permit issued by the department, unless the activity is an emergency, exemption, or exception as provided in this section.

1. If the department determines an emergency exists, it may issue an order citing the existence of such emergency and require that certain actions be taken as necessary to meet the emergency in accordance with the provisions of North Dakota Century Code section 23.1-08-19.
2. A solid waste management permit is not required for the following activities or facilities:
 - a. Backyard composting of leaves, grass clippings, or wood chips;
 - b. A collection point for parking lot or street sweepings;
 - c. Collection sites for wastes collected and received in sealed plastic bags from such activities as periodic cleanup campaigns for cities, rights of way, or roadside parks;
 - d. ~~Places which receive one or more recyclable materials, excluding garbage, for storage or for processing after which the material is transported for resource recovery, disposal, or storage;~~
 - ~~e.~~ Onsite incinerators used by hospitals, clinics, laboratories, or other similar facilities solely for incineration of commercial waste or infectious waste generated onsite;
 - ~~f.~~ e. Rock and dirt fills that receive any combination of rock, dirt, or sand;
 - ~~g.~~ f. Surface impoundments for storage, handling, and disposal of oil and gas exploration and production wastes on a lease or area permitted through the North Dakota industrial commission under North Dakota Century Code section 38-08-04;
 - ~~h.~~ g. The disposal into the mine spoils of the following wastes generated in the mining operation:
 - (1) Rock, boulders, and dirt; and
 - (2) Trees and brush.
 - ~~i.~~ h. The disposal of the following mining operation wastes into areas designated in a surface coal mining permit issued by the North Dakota public service commission for such disposal:

- (1) Inert waste from inspected farmsteads;
 - (2) Wood materials including pallets, lumber, lathe, cables, and fenceposts;
 - (3) Brick, concrete block, and cured concrete; and
 - (4) Plastic material and pipe.
3. A permit for the transportation of solid waste is not required by persons who:
- a. Transport solely their own waste to a solid waste management unit or facility; or
 - b. Transport waste entirely within a facility regulated under this article or entirely on their property; ~~or~~
 - ~~c. Transport a recyclable material other than used oil or scrap tires.~~

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-02. Permits by rule.

The owner or operator of the following facilities is deemed to have obtained a permit for a solid waste management facility without making application for it as long as the owner or operator remains in compliance with section 33.1-20-04.1-01 and the rules and requirements provided in the respective subsections of this section:

1. A facility for inert waste operated for municipalities which together have one thousand or fewer people provided:
 - a. The owner or operator of a new facility or lateral expansion of a landfill notifies the department, on forms available from the department, ninety days prior to any construction;
 - b. The facility is in compliance with sections ~~33.1-20-02.1-04~~ 33.1-20-02.1-05, 33.1-20-04.1-02, and 33.1-20-04.1-09 and with chapter 33.1-20-05.1.
2. A drop box facility in compliance with subsection 2 of section 33.1-20-04.1-06.
3. A waste pile for composting only grass and leaves that is operated for ten thousand or fewer people in compliance with section 33.1-20-04.1-07 provided the owner or operator notifies the department, on forms available from the department, ninety days prior to construction.
4. A pile of scrap tires accumulated by a tire dealer, a municipality, or a county which contains either one thousand three hundred or fewer car tires, twenty-five tons [22.7 metric tons] or less of shredded tires or a pile of tires, which is equivalent in volume to one twin-axle semitrailer load or less, provided that no public nuisance is created and the following requirements are addressed:
 - a. Access to the facility is monitored or controlled;
 - b. The location is accessible by fire control and emergency equipment; and
 - c. The owner or operator has appropriate provisions and financial arrangements for the recycling or disposal of tires.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

33.1-20-02.1-03. ~~Permit compliance~~ General permits for beneficial use, processing, or treatment of solid waste.

~~—All solid waste management facilities and activities must be performed, constructed, operated, and closed in a manner consistent with the permit application and subject to any modifications specified through permit conditions.~~

1. Authorization for a general permit:

a. The department may issue general permits on a regional or statewide basis for a category of beneficial use, processing, or treatment of solid waste, including recyclable materials, if the following are met:

- (1) The wastes included in the category are generated by the same or substantially similar operations and have the same or substantially similar physical characteristics and chemical composition. If wastes are not the same or substantially similar and are blended for use, the blend shall be consistently reproduced with the same physical characteristics and chemical composition.
- (2) The wastes included in the category are proposed for the same or substantially similar beneficial use, processing, or treatment operations.
- (3) The activities in the category can be adequately regulated utilizing standardized conditions without harming or presenting a threat of harm to human health, safety, or the environment. At a minimum, the use of the waste as an ingredient in an industrial process or as a substitute for a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing; and
- (4) The activities in the category are in accordance with the requirements and purposes of this article, and do not pose a threat of harm to human health, safety, or the environment.

b. A person does not require an individual solid waste permit under this article if the following are met:

- (1) The beneficial use, processing, or treatment activities are conducted in accordance with the terms and conditions of the applicable general permit; and
- (2) The person conducting the beneficial use, processing, or treatment activities has registered with the department for coverage under the general permit, if registration is required by the general permit.

c. Notwithstanding subdivision b, the department may require a person authorized by a general permit to apply for, and obtain, an individual permit when the person is not in compliance with the conditions of the general permit or is conducting an activity that, in the department's determination, may present a threat of harm to human health, safety, or the environment.

d. The department may issue a new general permit upon its own motion or upon an application from a person.

e. The department may impose a fee for a new general permit application or for registration or application for coverage under an existing general permit, based on the anticipated cost of filing and processing the application, taking action on the requested permit or

registration certificate, and conducting a monitoring and inspection program to determine compliance with the permit or registration certificate.

f. The department may modify, suspend, revoke, or reissue general permits or coverage under a general permit as it deems necessary to prevent harm or threat of harm to human health, safety, or the environment.

g. A person that beneficially uses, processes, or treats solid waste under a general permit shall comply with the terms and conditions of the general permit and requirements of this article to the same extent as if the activity were covered by an individual permit.

h. A person operating under a general permit has the burden of proving that the waste and activity are consistent with the general permit.

i. Persons applying for coverage or operating under a general permit are subject to all local zoning requirements.

2. Application for a new general permit. An application from a person for the issuance of a new general permit shall be submitted on a form provided by the department and must contain the following:

a. A description of the type of solid waste to be covered by the general permit, including physical and chemical characteristics of the waste. The chemical description shall contain an analysis of a sufficient number of samples of solid waste in the same waste type to accurately represent the range of physical and chemical characteristics of the waste type;

b. A description of the proposed type of beneficial use, processing, or treatment activity to be covered by the general permit;

c. A detailed narrative and schematic diagram of the production or manufacturing process from which the waste to be covered by the general permit is generated;

d. For beneficial use general permits, proposed concentration limits for contaminants in the beneficially used waste, and a rationale for those limits. At a minimum, the use of the waste as an ingredient in an industrial process or as a substitute for a raw material or a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing;

e. For general permits that involve beneficial use of solid waste, a detailed demonstration of the suitability of the waste for the proposed beneficial use, which must include:

(1) A demonstration that the physical characteristics and chemical composition of the solid waste contributes to the proposed beneficial use and does not interfere with the proposed beneficial use;

(2) If the waste is to be used as a substitute for a commercial product, a demonstration that the waste can perform the desired functions of the commercial product, and that the waste meets or exceeds all applicable national, state, local, or industry standards or specifications for the material for which the waste is being substituted;

(3) If the waste is to be used as a raw material for a product with commercial value, a demonstration that the waste will contribute significant properties or materials to the end product, and that the waste meets or exceeds all applicable national, state, local, or industry standards or specifications for the material for which the waste is being substituted;

- (4) If the waste is to be used in general roadway application or highway construction, a demonstration that approval will be granted by the department of transportation, if applicable, for the use of the waste for the intended application;
- (5) If the waste is to be used as a construction material, soil substitute, soil additive, or antiskid material, or is to be otherwise placed directly onto the land, an evaluation of the potential for adverse public health and environmental impacts from the proposed use of the solid waste. The evaluation shall identify the constituents of the waste which may present the potential for adverse public health and environmental impacts, and the potential pathways of human exposure to those constituents, including exposure through ground water, surface water, air, and the food chain; and
- (6) If the waste is to be used as a construction material, a description of the construction activities and detailed timelines for the prompt completion of the construction activities.

f. If solid wastes are blended for use, a demonstration that each waste results in a beneficial contribution to the use of the mixed waste and that the consistency of the blend will be maintained. The applicant shall specify the quantities and proportions of all materials included in the blended waste, and the mixture shall meet appropriate standards for use;

g. Payment of the fee specified in chapter 33.1-20-15 for a new general permit; and

h. Any other relevant information requested by the department.

3. Public notice and review period.

a. The department shall publish notice of receipt of an application for a new general permit on its official website when the department determines the application is determined to be substantially complete.

b. The department shall follow the same review and public notice procedures for new general permit applications as for individual permit applications in section 33.1-20-03.1-03.

c. The department shall publish all finalized and approved new general permits on its official website and list all persons who have registered for coverage under that general permit.

4. Contents of general permits. Each new general permit issued by the department must include, at a minimum:

a. A clear and specific description of the category of waste and the category of beneficial use, processing, or treatment of solid waste eligible for coverage under the general permit;

b. A brief description of the reasons for the department's determination that the category of beneficial use, processing or treatment is eligible for coverage under the general permit;

c. Registration or determination of applicability requirements and the fee, if any, imposed on registrants or applicants for coverage under the general permit;

d. A set of terms and conditions governing the beneficial use, processing or treatment of solid waste covered by the general permit that the department determines are necessary to ensure compliance with this article, including provisions for the protection of ground water. At a minimum, the conditions must include:

(1) Limits on the physical and chemical properties of waste that may be beneficially used, processed, or treated and a requirement that persons who conduct activities authorized by the general permit shall notify the department immediately on forms provided by the department, of a change in the physical or chemical properties of the solid waste, including leachability;

(2) The department's right of access to the site or facility where permitted activities are conducted for inspections as provided in North Dakota Century Code section 23.1-08-18;

(3) An effective date and a fixed permit term that may not exceed ten years from the effective date;

(4) A requirement that a person operating under the permit shall notify the department within the time stated in the permit and, if no time is stated no later than thirty days, in writing, of any changes in the following:

(a) The company's name, address, owners, operators, and responsible officials.

(b) Land ownership where the general permit is implemented.

(c) The physical and chemical characteristics of the solid waste.

(d) The generators of the solid waste and the manufacturing process that generates the solid waste.

(e) The status of any permit issued to the permittee or any agent of the permittee engaged in activities under the permit by the department.

(5) A requirement that the activities conducted under the authorization of a general permit must be conducted in accordance with the permittee's application, except to the extent that a general permit may state otherwise;

e. The general permit may include a requirement that persons that conduct activities authorized by the general permit shall submit to the department periodic reports, analyses of waste and other information to ensure the quality of the waste to be beneficially used or processed does not change; and

f. The general permit may include a requirement for financial assurance to remove materials remaining after closure or for emergency response site cleanup, based on the volume, physical, or chemical characteristics, or treatment methods of the materials covered under the general permit.

5. Coverage under a general permit.

a. A person is authorized to operate under a general permit if one of the following occurs:

(1) No registration required for coverage. The applicable general permit does not require persons to register with the department prior to operating under the general permit, and the person is operating in accordance with all terms of the general permit; or

(2) Registration required for coverage. The applicable general permit requires persons to register with the department prior to operating under the general permit. The department will notify the person that has registered that they may begin to operate in accordance with the terms of the general permit; or

(3) Application required for coverage. The applicable general permit requires persons to apply for and obtain authorization to operate, including site approval, from the department prior to operating under the general permit, and the department has made this authorization.

b. Except as provided in subdivision c, as a condition of each general permit, the department may require persons seeking coverage under the general permit to register or apply with the department within a specified time period. New operations not in existence before the issuance of a general permit shall register prior to conducting the activity authorized by the general permit.

c. For general permits where the solid waste is to be used as a construction material, antiskid material, or otherwise placed directly onto the land, as a condition of the general permit, the department may require persons who intend to operate under the general permit to apply for and obtain authorization from the department prior to conducting the activity authorized by the general permit. The department may impose the requirement for prior authorization on other general permits for beneficial use, processing, or treatment activities if the department determines the condition is necessary to prevent harm or a threat of harm to the health and safety of people or the environment.

d. If required by the general permit, the registration or application must include:

(1) The name and address of the person conducting the activity covered by the general permit;

(2) A description of each waste that will be beneficially used or processed in accordance with the general permit;

(3) The location where the general permit will be implemented;

(4) A description of the proposed method of processing or beneficial use of the waste;

(5) An analysis that is in accordance with the general permit, if the general permit requires a registrant or applicant to chemically analyze each waste to be processed or beneficially used;

(6) The name or number of the general permit being utilized for the activity;

(7) A demonstration that the activities the person intends to conduct are authorized by the general permit;

(8) A disclosure statement as required by North Dakota Century Code section 23.1-08-17;

(9) A signed statement by the person conducting the activity authorized by the general permit, on a form prepared by the department, which states that the person agrees to accept the conditions imposed by the general permit for beneficial use, processing, or treatment of solid waste under the general permit;

(10) A registration or application fee if required by the general permit; and

(11) Any other relevant information requested by the department.

e. The department may amend, suspend, or revoke coverage under a general permit if a person authorized to conduct solid waste activities under a general permit is not in compliance with all of the permit conditions or other requirements of this article.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03, [23-08-10](#); S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09, [23-08-10](#); S.L. 2017, ch. 199, § ~~23~~1

33.1-20-02.1-04. Record of noticePermit compliance.

- ~~1. Within sixty days of the issuance of a permit for any landfill, surface impoundment, or land treatment unit if not already completed, the owner or operator shall record a notarized affidavit with the county register of deeds. The affidavit must specify that this facility, as noted in the legal description, is permitted to accept solid waste for disposal. This affidavit must specify that another affidavit must be recorded upon the facility's final closure.~~
- ~~2. Within sixty days of completion of final closure of any landfill, surface impoundment, or land treatment facility and prior to sale or lease of the property on which the facility is located, the owner shall comply with North Dakota Century Code section 23.1-08-21. The record or plat shall, in perpetuity, notify any person conducting a title search that the land has been used as a solid waste disposal facility. The record or plat must indicate the types and quantities of solid waste placed in the site and details on the site's construction, operation, or closure (including precautions against any building, earth moving, or tillage on the closed site) that are necessary to ensure the long-term maintenance and integrity of the closed facility.~~
- ~~3. The department must be provided a certified copy of any affidavit or plat within sixty days of recording.~~

All solid waste management facilities and activities must be performed, constructed, operated, and closed in a manner consistent with the permit application and subject to any modifications specified through permit conditions.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-05. Property rightsRecord of notice.

~~An applicant for a permit for a solid waste management unit or facility shall acquire or possess a right to the use of the property for which a permit is sought, including the access route thereto. After closure, the applicant shall maintain the right of access to the site throughout the postclosure period.~~

1. Within sixty days of the issuance of a permit for any landfill, surface impoundment, or land treatment unit if not already completed, the owner or operator shall record a notarized affidavit with the county recorder. The affidavit must specify that this facility, as noted in the legal description, is permitted to accept solid waste for disposal. This affidavit must specify that another affidavit must be recorded upon the facility's final closure.
2. Within sixty days of completion of final closure of any landfill, surface impoundment, or land treatment facility and prior to sale or lease of the property on which the facility is located, the owner shall comply with North Dakota Century Code section 23.1-08-21. The record or plat shall, in perpetuity, notify any person conducting a title search that the land has been used as a solid waste disposal facility. The record or plat must indicate the types and quantities of solid waste placed in the site and details on the site's construction, operation, or closure (including precautions against any building, earth moving, or tillage on the closed site) which are necessary to ensure the long-term maintenance and integrity of the closed facility.
3. The department must be provided a certified copy of any affidavit or plat within sixty days of recording.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

33.1-20-02.1-06. ~~Permit modification, suspension, or revocation~~ Property rights.

- ~~1. A permit may be modified, suspended, revoked, or denied by the department for reasons pertaining to: circumstances which do not meet the purpose and provisions of this article, the provisions of the permit, or the plans and specifications submitted as part of the application for permit; or, violations of any applicable laws or rules. The department shall provide written notice to the permittee.~~
- ~~2. If a change occurs during the life of a permit for transporting solid waste (such as the number or type of vehicles used to transport waste, the service area, the waste categories transported, or the solid waste management facilities use), the permittee shall notify the department in writing within thirty days.~~
- ~~3. If a change occurs during the life of a permit for a solid waste management unit or facility, as specified in subsection 4, the permittee shall apply for and receive a modification of the permit prior to enacting the change. Routine maintenance, repair, or replacement, or an increase in hours of operations may not be considered a construction or operation change. Changes, including frequency of monitoring and reporting, waste sampling or analysis method, schedules of compliance, and revised cost estimates for closure and postclosure may be effected through written notice to and approval by the department.~~
- ~~4. The following changes at a permitted solid waste management unit or facility require a permit modification:
 - ~~a. A change to the facility boundaries or acreage;~~
 - ~~b. An increase in average daily solid waste specified in the permit or permit application, calculated by weight or volume for any twelve consecutive months;~~
 - ~~c. A change in the solid waste characteristics;~~
 - ~~d. An increase or decrease in finished height or finished slope of a landfill;~~
 - ~~e. Any increase in landfill trench or excavation depth;~~
 - ~~f. A change in facility site development which will result in impact to or encroachment into a one hundred-year floodplain, a ravine, a wetland, or a drainageway;~~
 - ~~g. A change in site drainage or management of runoff or run-on;~~
 - ~~h. A change in facility site development which will result in disposal of wastes closer to site boundaries than originally approved;~~
 - ~~i. The addition of solid waste management units, which, if sited independently, would require a permit; or~~
 - ~~j. Other changes that could have an adverse effect on the safety, health, or welfare of nearby residents, property owners, or the environment.~~~~
- ~~5. An application for modification of a solid waste management unit or facility shall follow the procedures and provisions of section 33.1-20-03.1-02.~~

An applicant for a permit for a solid waste management unit or facility shall acquire or possess a right to the use of the property for which a permit is sought, including the access route thereto. After closure, the applicant shall maintain the right of access to the site throughout the postclosure period.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-07. ~~Renewal of permit~~ Permit modification, suspension, or revocation.

~~—An application for renewal of any permit must be submitted at least sixty days prior to the expiration date. The application for renewal must follow the procedures and provisions of section 33.1-20-03.1-02. The conditions of an expired permit continue in force until the effective date of a new permit, if the permittee has submitted a timely and complete application for a new permit and the department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.~~

1. A permit may be modified, suspended, revoked, or denied by the department for reasons pertaining to: circumstances that do not meet the purpose and provisions of this article, the provisions of the permit, or the plans and specifications submitted as part of the application for permit; or, violations of any applicable laws or rules. The department shall provide written notice to the permittee.
2. If a change occurs during the life of a permit for transporting solid waste (such as the number or type of vehicles used to transport waste, the service area, the waste categories transported, or the solid waste management facilities use), the permittee shall notify the department in writing within thirty days.
3. If a change occurs during the life of a permit for a solid waste management unit or facility, as specified in subsection 4, the permittee shall apply for and receive a modification of the permit prior to enacting the change. Routine maintenance, repair, or replacement, or an increase in hours of operations may not be considered a construction or operation change. Changes, including frequency of monitoring and reporting, waste sampling or analysis method, schedules of compliance, and revised cost estimates for closure and postclosure may be effected through written notice to and approval by the department.
4. The following changes at a permitted solid waste management unit or facility require a major permit modification:
 - a. A change to the facility boundaries or acreage;
 - b. An increase in average daily solid waste specified in the permit or permit application, calculated by weight or volume for any twelve consecutive months;
 - c. A change in the solid waste characteristics;
 - d. An increase or decrease in finished height or finished slope of a landfill;
 - e. Any increase in landfill trench or excavation depth;
 - f. A change in facility site development which will result in impact to or encroachment into a one hundred-year floodplain, a ravine, a wetland, or a drainageway;
 - g. A change in site drainage or management of runoff or run-on;
 - h. A change in facility site development which will result in disposal of wastes closer to site boundaries than originally approved;
 - i. The addition of solid waste management units, which, if sited independently, would require a permit; or

j. Other changes that could have an adverse effect on the safety, health, or welfare of nearby residents, property owners, or the environment.

5. An application for modification of a solid waste management unit or facility must follow the procedures and provisions of section 33.1-20-03.1-02.

History: Effective January 1, 2019.; amended effective July 1, 2020

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-08. Renewal of permit.

An application for renewal of any permit must be submitted at least sixty days prior to the expiration date. The application for renewal must follow the procedures and provisions of section 33.1-20-03.1-02. The conditions of an expired permit continue in force until the effective date of a new permit, if the permittee has submitted a timely and complete application for a new permit and the department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-03.1

33.1-20-03.1-02. Permit application procedures.

1. An application for a permit must be submitted on forms available from the department by any person desiring to transport solid waste or to establish, construct, or operate a solid waste management unit or facility.
2. The application for a permit must be prepared by the applicant or the applicant's authorized agent and signed by the applicant.
3. ~~Four copies~~ One print copy and one searchable electronic copy of the application and supporting documents are required to be submitted to the department with the fee specified in chapter 33.1-20-15.
4. Upon the submission of an application for a permit for a new solid waste management unit or facility, the applicant shall publish a public notice indicating that an application has been submitted to the department. The public notice must indicate the type and location of the unit or facility and must be made by two separate publications in the official county newspaper in the county in which the site or operation is located. The applicant shall provide proof of publication by submitting to the department, within sixty days after the second publication of the notice, and affidavit from the publisher accompanied by a copy of the published notice, which shows the date of publication. The department may require public notice for facility changes listed in subsection 4 of section ~~33.1-20-02.1-06~~ 33.1-20-02.1-07.
5. Applicants proposing a solid waste management facility in a mining permit area for disposal of coal processing waste must also file a copy of the application with the public service commission in accordance with subdivision a of subsection 1 of section 69-05.2-19-02.
6. Applications for a solid waste management unit or facility permit must include the following information where applicable:
 - a. A completed application form, subsection 1;
 - b. A description of the anticipated physical and chemical characteristics, estimated amounts, and sources of solid waste to be accepted, including the demonstration required by North Dakota Century Code section 23.1-08-14;
 - c. The site characterization of section 33.1-20-13-01 and a demonstration that the site fulfills the location standards of section 33.1-20-04.1-01;
 - d. Soil survey and segregation of suitable plant growth material;
 - e. Demonstrations of capability to fulfill the general facility standards of section 33.1-20-04.1-02;
 - f. Facility engineering specifications adequate to demonstrate the capability to fulfill performance, design, and construction criteria provided by this article and enumerated in this subdivision:
 - (1) Transfer stations and drop box facilities, section 33.1-20-04.1-06.
 - (2) Waste piles, section 33.1-20-04.1-07.
 - (3) Resource recovery, section 33.1-20-04.1-08.
 - (4) Land treatment, ~~sections~~ section 33.1-20-04.1-09 and chapter 33.1-20-09.

- (5) ~~Surface~~Non-CCR surface impoundments, ~~sections~~section 33.1-20-04.1-09 and chapter 33.1-20-08.1.
 - (6) Any disposal, section 33.1-20-04.1-09.
 - (7) Inert waste landfill, chapter 33.1-20-05.1.
 - (8) Municipal waste landfill, chapter 33.1-20-06.1.
 - (9) Industrial waste landfill, chapters 33.1-20-07.1 or 33.1-20-10.
 - (10) TENORM waste landfill, chapters 33.1-20-07.1 or 33.1-20-10 and 33.1-20-11.
 - (11) Special waste landfill, chapter 33.1-20-07.1
 - (12) CCR unit, chapter 33.1-20-08.
 - (13) Municipal solid waste ash landfills, chapter 33.1-20-10.
 - (14) Regulated infectious waste unit, chapter 33.1-20-12;
 - g. The plan of operation of section 33.1-20-04.1-03;
 - h. Demonstration of the treatment technology of section 33.1-20-01.1-12;
 - i. The place where the operating record is or will be kept, section 33.1-20-04.1-04;
 - j. Demonstration of capability to fulfill the ground water monitoring standards, ~~section~~sections 33.1-20-08-06 or 33.1-20-13-02;
 - k. Construction quality assurance and quality control;
 - l. Demonstrations of capability to fulfill the closure standards, section 33.1-20-04.1-05 and otherwise provided by this article;
 - m. Demonstrations of capability to fulfill the postclosure standards, section 33.1-20-04.1-09 and otherwise provided by this article; and
 - n. A disclosure statement as required by North Dakota Century Code section 23.1-08-17.
7. Applications for a solid waste transporter's permit must include the following information:
- a. A completed application form, subsection 1;
 - b. Description of the types of solid waste to be transported, approximate quantities, and anticipated ~~generator~~collection sources;
 - c. A list of the anticipated solid waste management facilities that will store, treat, process, recycle, or dispose the solid waste;
 - d. Description of equipment and transportation spill prevention as required by section 33.1-20-01.1-05; and
 - e. A disclosure statement as required by North Dakota Century Code section 23.1-08-17.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09, 23.1-08-14, 23.1-08-17; S.L. 2017, ch. 199, § 23

33.1-20-03.1-03. Permit application review and action.

1. The department will review the applications, plans, and specifications for solid waste transporters and for solid waste management facilities and information submitted as a result of the public notices.
2. Upon completion of the department's review, the application for permit will be approved, returned for clarification and additional information, or denied.
 - a. The basis for approval must be an application which demonstrates compliance with this article and North Dakota Century Code chapter 23.1-08.
 - b. The basis for return must be an application which is procedurally or technically incomplete, inaccurate, or deficient in detail, or which precludes an orderly review and evaluation. If the application is returned, the applicant may resubmit an application, complete with all necessary information to satisfy deficiencies. If the applicant does not resubmit an application within six months, the department shall consider the application withdrawn, and any subsequent application must be considered a new application.
 - c. The basis for denial must be an application which contains false, misleading, misrepresented, or substantially incorrect or inaccurate information; fails to demonstrate compliance with this article; proposes construction, installation, or operation of a solid waste management unit or facility which will result in a violation of any part of this article; or is made by an applicant for whom an environmental compliance background review reveals any of the circumstances listed in subsection 14 of North Dakota Century Code section 23.1-08-03.

3. If the department makes a preliminary determination to issue a permit for a solid waste management facility or for a general permit, the department shall prepare a draft permit. The department may impose reasonable conditions upon a permit. The draft permit will be available for public review and comment after the department publishes a notice of its ~~intent~~consideration to issue the permit.

The public notice for a draft solid waste management facility permit must be published in the official county newspaper in the county in which the solid waste management unit or facility is located and in a daily newspaper of general circulation in the area of the facility. The public notice for a draft general permit must be published in all daily newspapers of general circulation in the state.

- a. Interested persons may submit written comments to the department on the draft permit within thirty days of the final public notice. All written comments will be considered by the department in the formulation of its final determinations.
 - b. The department may hold a hearing if it determines there is significant public interest in holding such a hearing. Public notice for a hearing will be made in the same manner as for a draft permit. The hearing will be before the department and will be held at least fifteen days after the public notice has been published.
4. If, after review of all information received, the department approves the permit application, the department shall ~~issue a permit. The department may impose reasonable conditions upon a permit.;~~

a. Issue a permit if it is for the renewal of an existing solid waste management facility or a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation; or

b. Notify the board of county commissioners in which a new solid waste management facility will be located of the intent to issue a permit, and the county's opportunity to call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county. If the voters approve the facility or if a special election is not called, the department shall issue the permit.

5. If, after review of all information received, the department makes the determination to deny the permit, the applicant will be notified, in writing, of the denial. The department shall set forth in any notice of denial the reasons for denial. If the application is denied, the applicant may submit a new application, which will require a new public notice. A denial must be without prejudice to the applicant's right to a hearing before the department pursuant to North Dakota Century Code chapter 28-32.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-04.1

33.1-20-04.1-01. General location standards.

1. No solid waste management facility may be located in areas which result in impacts to human health or environmental resources or in an area which is unsuitable because of reasons of topography, geology, hydrology, or soils.
2. Sites for new, or for lateral expansions of, land treatment units, surface impoundments closed with solid waste in place, municipal waste landfills, industrial waste landfills, and special waste landfills must minimize, control, or prevent the movement of waste or waste constituents with geologic conditions and engineered improvements. Sites should be underlain by materials with low permeability to provide a barrier to contaminant migration. Sites for CCR units subject to chapter 33.1-20-08 must also comply with the location standards of section 33.1-20-08-03.
 - a. The following geographic areas or conditions must be excluded in the consideration of a site:
 - (1) Where the waste is disposed within an aquifer;
 - (2) Within a public water supply designated wellhead protection area;
 - (3) Within a one hundred-year floodplain;
 - (4) Where geologic or manmade features, including underground mines, may result in differential settlement and failure of a structure or other improvement on the facility;
 - (5) On the edge of or within ~~channels, ravines, or steep~~
 - (a) Channels;
 - (b) Ravines;
 - (c) Areas of steep topography whose slope is unstable due to erosion or mass movement;
 - (6) Within woody draws; or
 - (7) In areas designated as critical habitats for endangered or threatened species of plant, fish, or wildlife.
 - b. The following geographic areas or conditions may not be approved by the department as a site unless the applicant demonstrates there are no reasonable alternatives:
 - (1) Over or immediately adjacent to principal glacial drift aquifers identified by the state engineer;
 - (2) Closer than one thousand feet [304.8 meters] to a down gradient drinking water supply well;
 - (3) Closer than two hundred feet [60.96 meters] horizontally from the ordinary high water elevation of any surface water or wetland;
 - (4) Within final cuts of surface mines; or
 - (5) Closer than one thousand feet [304.8 meters] to any state or national park.
 - c. The department may establish alternative criteria based on specific site conditions.

3. No municipal waste landfill or lateral expansion may be located within ten thousand feet [3,048 meters] of any airport runway currently used by turbojet aircraft or five thousand feet [1,524 meters] of any runway currently used by only piston-type aircraft. Owner or operators proposing a new site or lateral expansions for a municipal waste landfill within a five-mile [8.05-kilometer] radius of an airport must notify the affected airport and the federal aviation administration.
4. A minimum horizontal separation of twenty-five feet [7.62 meters] must be maintained between new or lateral expansions of solid waste management units and any aboveground or underground pipeline or transmission line. The owner shall designate the location of all such lines and easements.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-04.1-03. Plan of operation.

All solid waste management facilities, except those permitted by rule, shall meet the requirements of this section.

1. The owner or operator of a solid waste management unit or facility shall prepare and implement a plan of operation approved by the department as part of the permit. The plan must describe the facility's operation to operating personnel and the facility must be operated in accordance with the plan. The plan of operation must be available for inspection at the request of the department. Each plan of operation must include, where applicable:
 - a. A description of waste acceptance procedures, including categories of solid waste to be accepted and waste rejection procedures as required by subsection 2 of section 33.1-20-05.1-02 or subsection 8 of section 33.1-20-06.1-02 or subsection 2 of section 33.1-20-07.1-01 or subsection 4 of section 33.1-20-10-03;
 - b. A description of waste handling procedures;
 - c. A description of facility inspection activities required by subsection 2, including frequency;
 - d. A description of contingency actions for the following:
 - (1) Fire or explosion;
 - (2) Leaks;
 - (3) Ground water contamination;
 - (4) Other releases (for example, dust, debris, [leachate](#), failure of run-on diversion or runoff containment systems); and
 - (5) Any other issues pertinent to the facility.
 - e. Leachate removal system operation and maintenance procedures;
 - f. Safety procedures;
 - g. For landfills, implementation of sequential partial closure;
 - h. A description of industrial waste or special waste management procedures, which include:

- (1) A procedure for notifying solid waste generators and haulers of the facility operating requirements and restrictions;
 - (2) A procedure for evaluating waste characteristics, liquid content, the specific analyses that may be required for specific wastes, and the criteria used to determine when analyses are necessary, the frequency of testing, and the analytical methods to be used;
 - (3) A procedure for inspecting and for identifying any special management requirements, and the rationale for accepting or rejecting a waste based on its volume and characteristics;
 - (4) Procedures for managing the following solid waste, as appropriate:
 - (a) Bulk chemical containers which contain free product or residue;
 - (b) Asbestos;
 - (c) Waste containing polychlorinated biphenyls at a concentration less than fifty parts per million;
 - (d) Radioactive waste;
 - (e) Rendering and slaughterhouse waste;
 - (f) Wastes that could spontaneously combust or that could ignite other waste because of high temperatures;
 - (g) Foundry waste;
 - (h) Ash from incinerators, resource recovery facilities, and power plants;
 - (i) Paint residues, paint filters, and paint dust;
 - (j) Sludges, including ink sludges, lime sludge, wood sludge, and paper sludge;
 - (k) Fiberglass, urethane, polyurethane, and epoxy resin waste;
 - (l) Spent activated carbon filters;
 - (m) Oil and gas exploration and production waste;
 - (n) Wastes containing free liquids;
 - (o) Contaminated soil waste from cleanup of spilled products or wastes; and
 - (p) Any other solid waste that the owner or operator plans to handle.
 - (5) The owner or operator must describe any solid waste that will not be accepted at the facility; and
 - i. The owner or operator must amend the plan whenever operating procedures, contingency actions, waste management procedures, or wastes have changed. The owner or operator shall submit the amended plan to the department for approval or disapproval.
2. The owner or operator shall inspect the facility to ensure compliance with this article, a permit, and approved plans. The owner or operator shall keep an inspection log including information

such as the date of inspection, the name of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action taken.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-04.1-04. Recordkeeping and reporting.

The owner or operator of a solid waste management facility, except those permitted by rule, shall comply with these recordkeeping and reporting requirements:

1. A solid waste management facility may not accept solid waste until the department has received and approved a report which includes narrative, drawings, and test results to certify that the facility has been constructed in accordance with the approved plans and specifications and as required by the permit.
2. An owner or operator shall keep an operating record consisting of a copy of each application, plan, report, notice, drawing, inspection log, test result or other document required by this article, including those enumerated in the subdivisions of this subsection, or a permit. The operating record must include any deviations from this article, the permit, and facility plans where department approval is required. The owner or operator shall provide a copy of any document in the operating record upon receiving a request from the department. The operating record must be kept at the facility, or at a location near the facility within North Dakota and approved by the department.
 - a. The permit preapplication, section 33.1-20-03.1-01.
 - b. The permit application, section 33.1-20-03.1-02.
 - c. An amended permit application, section 33.1-20-03.1-03.
 - d. The site characterization, section 33.1-20-13-01.
 - e. Any site demonstrations, section 33.1-20-04.1-01.
 - f. Documentation of training, section 33.1-20-04.1-02.
 - g. The plan of operation, section 33.1-20-04.1-03.
 - h. Facility inspection logs, section 33.1-20-04.1-03.
 - i. Records of notice, section ~~33.1-20-02.1-04~~[33.1-20-02.1-05](#).
 - j. As-built drawings and certifications, sections 33.1-20-04.1-04 and 33.1-20-04.1-05.
 - k. The ground water monitoring plan, all monitoring data, and statistical interpretations, section 33.1-20-13-02.
 - l. Records of the weight or volume of waste, section 33.1-20-04.1-09.
 - m. The closure plan, sections 33.1-20-04.1-05 and 33.1-20-14-02.
 - n. The postclosure plan, sections 33.1-20-04.1-09 and 33.1-20-14-02.
 - o. The financial assurance instruments for closure and postclosure, chapter 33.1-20-14.
 - p. Records of gas monitoring and remediation, section 33.1-20-06.1-02.

- q. The annual report, section 33.1-20-04.1-04.
 - r. Notices of intent to close and completion of postclosure, sections 33.1-20-04.1-05 and 33.1-20-04.1-09 respectively.
 - s. The permit and any modifications, sections ~~33.1-20-02.1-03~~33.1-20-02.1-04 and ~~33.1-20-02.1-06~~33.1-20-02.1-07.
3. An owner or operator shall prepare and submit a searchable electronic copy of an annual report to the department by March first of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:
- a. Name and address of the facility;
 - b. Calendar period covered by the report;
 - c. Annual quantity for each category of solid waste in tons or volume;
 - d. Identification of occurrences and conditions that prevented compliance with the permit and this article; and
 - e. Other items identified in the facility plans and permit.

4. An owner or operator required to monitor ground water pursuant to chapter 33.1-20-13 shall prepare and submit a ground water annual report to the department by April first of each year. The ground water annual report must cover ground water analysis for the facility during the previous calendar year and must include the following information:

- a. Name and address of the facility;
- b. Calendar period covered by the report;
- c. A map, aerial image, or diagram showing the solid waste unit and all background (or upgradient) and downgradient monitoring wells and the well identification numbers for the wells that are part of the ground water monitoring program for the solid waste unit;
- d. Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;
- e. All monitoring data obtained and a summary including the number of ground water samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;
- f. Statistical interpretations;
- g. A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituents detected at a statistically significant increase over background levels);
- h. Identification of occurrences and conditions that prevented compliance with the permit or this article; and
- i. Other items identified in the facility plans and permit.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-04.1-05. General closure standards.

The requirements of this section apply to all solid waste management facilities, unless otherwise specified.

1. Each owner or operator shall close their facility in a manner that achieves the following:
 - a. Minimizes the need for further maintenance; and
 - b. Controls, minimizes, or eliminates any escape of solid waste constituents, leachate, fugitive emissions, contaminated runoff, or waste decomposition products.
2. Sequential partial closure must be implemented to minimize the working face of a landfill.
3. Closure must be implemented within thirty days after receipt of the final volume of waste and must be completed within one hundred eighty days following the beginning of closure activities, unless otherwise specified and approved under subsection 5. Prior to beginning closure, the owner or operator must notify the department in writing of the intent to close.
4. The owner or operator of a landfill for which closure is completed in part or whole shall enter into the operating record and submit to the department:
 - a. As-built drawings showing the topography, pertinent design features, extent of waste, and other appropriate information; and
 - b. Certification by the owner or operator and a qualified professional engineer that closure has been completed in accordance with the approved closure plan and this article.
5. Each owner or operator shall prepare and implement a written closure plan approved by the department as part of the permitting process. The closure plan must:
 - a. Estimate the largest area ever requiring final cover at any time during the active life of the site;
 - b. Estimate the maximum inventory of solid waste onsite over the active life of the facility;
 - c. For landfills, describe the final cover and the methods to install the cover;
 - d. Project time intervals at which sequential partial closure or closure is to be implemented;
 - e. Describe the resources and equipment necessary for closure; and
 - f. Identify closure costs estimates and provide financial assurance mechanisms as required by chapter 33.1-20-14.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-04.1-09. General disposal standards.

1. In addition to sections 33.1-20-04.1-02, 33.1-20-04.1-03, 33.1-20-04.1-04, and 33.1-20-04.1-05, the standards of this section apply to all landfills, surface impoundments closed with solid waste in place, and land treatment units, unless otherwise indicated.
2. Construction and operation standards for solid waste management facilities regulated by this section:

- a. Every solid waste landfill or facility shall have and maintain, or have access to, equipment adequate for the excavation, compaction, covering, surface water management, and monitoring procedures required by approval plans and this article.
 - b. Roads must be constructed and maintained to provide access to the facility. Access roads must be cleaned and decontaminated as necessary.
 - c. There must be available an adequate supply of suitable cover material, which, if necessary, must be stockpiled and protected for winter operation.
 - d. The final cover of all disposal facilities must be designed and constructed in a manner that ensures the quality and integrity of the hydraulic barrier and the protective vegetative cover.
 - e. The working face or open area of a landfill must be limited in size to as small an area as practicable. Sequential partial closure must be implemented as necessary to keep the disposal area as small as practicable and to close filled areas in a timely manner.
 - f. All disposal facilities shall identify, quantify, remove, stockpile, and maintain suitable plant growth material for later use in closure.
 - g. Any recycling or salvage activity must be authorized by the owner or operator and must be in a separate area in a manner to avoid injury and interference with the landfill operation.
 - h. Vehicles, farm machinery, metal appliances, mobile homes, trailers, or other similar items brought to the facility for recycling may be stored temporarily in a separate area.
 - i. Vector control measures, in addition to the application of cover material, must be instituted whenever necessary to prevent the transmission of disease, prevent bird hazards to aircraft, and otherwise prevent and reduce hazards created by rats, flies, snakes, insects, birds, cats, dogs, and skunks.
 - j. All domestic animals must be excluded from the facility. Feeding of garbage to animals is prohibited.
 - k. All earthen material must be maintained onsite unless removal from the site is authorized by the department.
3. Construction and operation standards, excluding inert waste landfills.
- a. The landfill must be designed and operated to prevent the run-on and runoff of surface waters resulting from a maximum flow of a twenty-five-year, twenty-four-hour storm.
 - b. Facilities receiving on average over twenty tons [18.2 metric tons] per day of solid waste shall make provisions for measuring all waste delivered to and disposed in the facility. Weight measurements are preferable; volume measurements (cubic yards) are acceptable.
 - c. Active areas of the landfill must be surveyed periodically to ensure that filling is proceeding in a manner consistent with the landfill design and that closure grades are not exceeded.
 - d. All run-on or runoff must be properly controlled to avoid its concentration on or in solid waste and to minimize infiltration into the waste material. Disposal shall avoid any areas within the facility where run-on or runoff accumulates.

- e. Leachate removal systems must be operated and maintained to assure continued function according to the design efficiency. This shall include, where applicable:
 - (1) Flushing, inspection and, if necessary, repair of collection lines after placement of the first layer of waste in a landfill cell;
 - (2) Annual sampling and analysis of leachate for the parameters required under the ground water quality monitoring required under section 33.1-20-13-02;
 - (3) At minimum, semiannual monitoring of leachate head or elevations above the liner;
 - (4) Annual flushing of leachate collection lines to remove dirt and scale; and
 - (5) Inclusion of leachate removal system operation, inspection, and maintenance procedures in the operating record.

f. No composite liner may be exposed to freezing more than one winter season, excluding composite liners in surface impoundments. At least three feet [0.91 meters] of solid waste or other material approved by the department must be placed above the upper drainage layer on all lined areas by December first. No disposal may take place after December first in areas that have not met this requirement without first testing the composite liner's integrity and receiving approval from the department.

- 4. Closure standards, excluding land treatment units.
 - a. Closed solid waste management units may not be used for cultivated crops, heavy grazing, buildings, or any other use which might disturb the protective vegetative and soil cover.
 - b. All solid waste management units must be closed with a final cover designed to:
 - (1) Limit the amount of percolation that may enter the waste to meet the efficiency requirements for that type of solid waste management unit;
 - (2) Minimize precipitation run-on from adjacent areas;
 - (3) Minimize erosion and optimize drainage of precipitation falling on the landfill. The grade of slopes may not be less than three percent, nor more than fifteen percent, unless the applicant or permittee provides justification to show steeper slopes are stable and will not result in long-term surface soil loss in excess of two tons [1.82 metric tons] per acre per year. In no instance may slopes exceed twenty-five percent, including exterior slope of any swales or drainage structures; and
 - (4) Provide a surface drainage system which does not adversely affect drainage from adjacent lands.
 - c. The final cover must include six inches [15.2 centimeters] or more of suitable plant growth material which must be seeded with shallow rooted grass or native vegetation.
 - d. The department may allow, on a case-by-case basis, the use of closed inert waste landfill sites for certain beneficial uses that would not pose a threat to human health or the environment.
- 5. Postclosure standards for solid waste management facilities regulated by this section.
 - a. The owner or operator of a landfill or a surface impoundment closed with solid waste in place shall meet the following during the postclosure period:

- (1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover to correct effects of settlement, subsidence, and other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;
 - (2) Maintain and operate the leachate collection system, if applicable;
 - (3) Monitor the ground water and maintain the ground water monitoring system, if applicable; and
 - (4) Operate and maintain the gas control system, if applicable.
- b. The owner or operator of a municipal waste landfill, an industrial waste landfill, a special waste landfill, a surface impoundment closed with solid waste remaining in place, or a land treatment facility shall prepare and implement a written postclosure plan approved by the department as a part of the permitting process. The postclosure plan must address facility maintenance and monitoring activities for a postclosure period of thirty years.
- (1) Postclosure includes appropriate ground water monitoring; surface water monitoring; gas monitoring; and maintenance of the facility, facility structures, and ground water monitoring systems.
 - (2) The postclosure plan must provide the name, address, and telephone number of the person or office to contact during the postclosure period; and project time intervals at which postclosure activities are to be implemented, identify postclosure cost estimates, and provide financial assurance mechanisms as required by chapter 33.1-20-14.
 - (3) The department may require an owner or operator to amend the postclosure plan, including an extension of the postclosure period, and implement the changes. If the permittee demonstrates that the facility is stabilized, the department may authorize the owner or operator to discontinue postclosure activities.
- c. Following completion of the postclosure period, the owner or operator shall notify the department verifying that postclosure management has been completed in accordance with the postclosure plan.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-04.1-10. Other methods of solid waste management - Standards.

New and unique methods developed subsequent to ~~December 1, 1992~~July 1, 2020, which can be utilized without environmental degradation and creation of hazards to public health and safety will be considered by the department.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-05.1

33.1-20-05.1-02. Performance and design criteria.

The owner or operator of an inert waste landfill shall comply with these design, construction, and operating standards.

1. Access to the facility must be controlled by lockable gates and a combination of fencing, natural barriers, or artificial barriers.
2. Disposal of the following solid waste into inert waste landfills is prohibited: agricultural waste, asbestos waste, municipal waste, commercial waste, industrial waste, special waste, regulated infectious waste, liquid solid waste, hazardous waste, and radioactive waste.
3. All wastes deposited at the site must be spread and periodically compacted to promote drainage of surface water.
4. All wastes must be covered at least two times per year with a minimum of six inches [15.2 centimeters] of suitable earthen material.
 - a. The department may exempt the owner or operator of the landfill from this requirement based on the type and amount of waste received at the landfill and the site location.
 - b. This requirement does not apply to monofills used solely for bottom ash from coal-fired boilers [that are not subject to chapter 33.1-20-08](#).
5. Inert waste permits must be limited to an area no larger than necessary to properly conduct permitted inert waste disposal activities. The department shall take into consideration each applicant's operating needs and conditions when evaluating this requirement in order to best achieve the purposes of this chapter.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-05.1-04. Closure criteria.

~~Closure of an existing unit must be completed as outlined in sections 33.1-20-04.1-05 and 33.1-20-04.1-09. All existing units must be covered with two feet [61.0 centimeters] or more of earthen material, the lower twelve inches [30.5 centimeters] of which must be compacted clay-rich earthen material, free from cracks and extrusions of solid waste. If a cover of four feet [1.2 meters] or more of clay-rich earthen material is achieved, compaction is not required. At least six inches [15.2 centimeters] of suitable plant growth material must be placed over the covered landfill and planted with adapted grasses.~~ [In addition to sections 33.1-20-04.1-05 and 33.1-20-04.1-09, at closure, an owner or operator shall cover an existing unit with a layer of compacted clay-rich earthen material having a thickness of twelve inches \[30.5 centimeters\] or more and free from cracks and extrusions of solid waste. A second layer of six inches \[15.2 centimeters\] or more of clay-rich soil material suitable for serving as a plant root zone must be placed over the compacted layer. At least six inches \[15.2 centimeters\] of suitable plant growth material must be placed over the covered landfill and the facility planted with adapted grasses. The total thickness of the final cover must be at least two feet \[61.0 centimeters\]. If a total cover thickness of four feet \[1.2 meters\] or more of clay-rich earthen material is achieved, including the six-inch layer of suitable plant growth material, compaction is not required.](#)

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-06.1

33.1-20-06.1-02. Performance and design criteria.

The owner or operator of a municipal waste landfill facility shall comply with these design, construction, and operating standards.

1. Access to the facility must be controlled by lockable gates and a combination of fencing, natural barriers, or artificial barriers. The gates must be locked when an attendant is not on duty.
2. Any new or lateral expansion of a municipal waste landfill must be underlain with a hydraulic barrier and leachate removal system capable of collecting and removing leachate and contaminated surface water within the landfill.
 - a. The liner and leachate removal system must be compatible with the waste and leachate.
 - b. The liner and leachate removal system must maintain its integrity for the life of the facility and the postclosure period.
 - c. The leachate removal system must have a collection efficiency of ninety percent or better and be capable of maintaining a hydraulic head of twelve inches [30.5 centimeters] or less above the liner.
 - d. The liner must consist of one of the following:
 - (1) A natural soil liner constructed of at least four feet [1.2 meters] of natural soil having a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second; or
 - (2) A composite liner consisting of two components; the upper component must consist of a minimum thirty mil flexible membrane liner, and the lower component must consist of at least a two-foot [61.0-centimeter] layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second. Flexible membrane liner components consisting of high density polyethylene must be at least sixty mil thick. The flexible membrane liner component must be installed in direct and uniform contact with the compacted soil component.
 - e. The drainage layer of the leachate removal system must have a hydraulic conductivity of 1×10^{-3} centimeters per second or greater throughout. The drainage layer must have sufficient thickness to provide a transmissivity of 3.0×10^{-2} centimeters squared per second or greater.
 - f. Appropriate measures must be provided as necessary for preparation of the liner subgrade, quality assurance, and quality control testing of the construction of the liner and leachate removal system, and protection and maintenance of the liner and leachate removal system to ensure the integrity of the system.
 - g. An alternative liner and leachate removal system for a landfill site may be approved by the department. The department must consider factors such as the proposed system's ability to control leachate migration, the hydrogeologic characteristics of the site and surrounding land, the climate of the area, or the potential leachate quality.
3. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of ninety-five percent or better for rejection or collection of the precipitation that falls on the site.

4. Methane and other gases from waste decomposition may not be allowed to migrate laterally from the landfill so as to endanger structures, environmental resources, or adjacent properties.
 - a. The concentration of methane gas generated by landfills on the facility must not exceed twenty-five percent of the lower explosive limit for methane in structures or appurtenances on the facility.
 - b. The concentration of methane gas must not exceed the lower explosive limit for methane at the facility boundary.
 - c. Monitoring of methane gas must be conducted at least quarterly, on a schedule proposed by the owner or operator and approved by the department, to assure that the standards of subdivisions a and b are met. The frequency of monitoring must consider such factors as the facility site conditions, hydrogeologic conditions surrounding the site, or climate of the area.
 - d. If methane gas levels exceed the standards of subdivisions a and b, the owner or operator must:
 - (1) Immediately take action to protect public health;
 - (2) Notify the department within seven days; and
 - (3) Implement remedial measures within sixty days.
5. A certified operator must be on duty while the facility is receiving solid waste. Facilities receiving on average over twenty tons [18.2 metric tons] of municipal waste per day shall have an attendant at or near the entrance to the facility to monitor, accept or reject, measure, and record wastes arriving at the facility.
6. Solid waste must be unloaded at the bottom of the working face of the fill. The waste must then be spread in layers and compacted as densely as practicable. Each layer may not exceed a thickness of two feet [61.0 centimeters] of material after compaction is completed.
7. Household pet animal carcasses may be buried along with other municipal household waste. Larger animal carcasses must be disposed of immediately and must be placed at least four feet [1.2 meters] below grade with at least twelve inches [30.5 centimeters] of cover material directly covering the carcass.
8. The following wastes may not be accepted for disposal in municipal waste landfills unless approved by the department:
 - a. Hazardous waste, except in amounts normally in municipal waste;
 - b. Industrial waste, if not addressed in the industrial waste management plan and the permit;
 - c. Lead acid batteries;
 - d. Liquids, except in amounts normally in household waste, unless the liquid is leachate or gas condensate derived from the municipal solid waste landfill and the municipal solid waste landfill, whether it is a new or existing landfill or a lateral expansion, is designed with a composite liner and leachate collection system as described in this section;
 - e. Major appliances;
 - f. Municipal waste incinerator ash;

- g. Other waste, if the department determines that such waste has toxic or adverse characteristics which can impact public health or environmental resources;
 - h. Pesticide containers which are not empty and have not been triple-rinsed, except those normally in municipal waste;
 - i. Polychlorinated biphenyls (PCB) waste as defined in 40 CFR part 761;
 - j. Raw or digested sewage sludges, lime sludges, grit chamber cleanings, animal manure, septic tank pumpings, bar screenings, and other sludges, if not included in the permit;
 - k. Regulated infectious waste, except in amounts normally in household waste;
 - l. Special waste; and
 - m. Used oil.
9. A uniform compacted layer of six inches [15.2 centimeters] or more of suitable earthen material or other departmentally approved material must be placed on all solid waste by the end of each working day. All cover must be free of trash, garbage, or other similar waste.
10. On all areas where final cover or additional solid waste will not be placed within one month, an additional six inches [15.2 centimeters] or more of compacted, clay-rich earthen material or other departmentally approved material must be placed. This intermediate cover may be removed when disposal operations resume.

History: Effective January 1, 2019; [amended effective July 1, 2020.](#)

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-08, 23.1-08-15; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-07.1

33.1-20-07.1-01. Performance and design criteria.

In addition to the requirements of section ~~33.1-20-01.1-08~~33.1-20-01.1-11 and chapter 33.1-20-04.1, the owner or operator of an industrial waste landfill or a special waste landfill, excluding CCR landfills subject to chapter 33.1-20-08, shall comply with the design, construction, and operating standards as follows:

1. On all areas of the landfill where final cover or additional solid waste will not be placed within six months, eight inches [20.3 centimeters] or more of compacted clay-rich soil material, similar material, or a synthetic cover must be placed to prevent ponding of surface water, to minimize infiltration of surface water, and to control windblown dust.
2. Solid waste disposal in industrial waste landfills and special waste landfills must be limited to those wastes identified in the permit application or permit. Regulated infectious waste, used oil as a free liquid, and hazardous waste may not be accepted for disposal at the landfill. TENORM waste may only be accepted under the provisions of chapter 33.1-20-11.
3. All solid wastes deposited at the landfill must be spread and compacted as densely as practicable to minimize waste volume and promote drainage of surface water.
4. Any new or lateral expansion of an industrial waste landfill or special waste landfill must be designed with an appropriate hydraulic barrier and leachate management system capable of collecting and removing leachate and contaminated surface water within the disposal unit.
 - a. The liner and leachate removal system must be compatible with the waste and leachate.
 - b. The liner and leachate removal system must maintain its integrity during the operating period and through the postclosure period.
 - c. The system must have a collection efficiency of ninety percent or better and must be capable of maintaining a hydraulic head of twelve inches [30.5 centimeters] or less above the liner.
 - d. For landfills that receive wastes containing water soluble constituents, the liner must consist of at least four feet [1.2 meters] of compacted natural soil having a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second.
 - e. A composite liner is required for landfills receiving TENORM waste or wastes which may contain leachable organic constituents. The liner must consist of at least three feet [91.4 centimeters] of recompacted clay with a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second overlain with at least a sixty mil flexible membrane liner.
 - f. The drainage layer must have a hydraulic conductivity of 1×10^{-3} centimeters per second or greater throughout. The drainage layer must have a sufficient thickness to provide a transmissivity of 3×10^{-2} centimeters squared per second or greater.
 - g. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of at least ninety-eight and one-half percent or better for collection or rejection of the precipitation that falls on the site.
 - h. The requirements of this subsection for a liner, leachate collection system, or both liner and leachate collection system may be modified by the department if the permit applicant demonstrates that, based on factors such as geology and hydrology of the site, characteristics of the waste, and engineering design, any leachate migration can be prevented or controlled.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04, 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, §§ 18, 23

33.1-20-07.1-02. Closure criteria.

In addition to sections 33.1-20-04.1-05 and 33.1-20-04.1-09, at closure, an owner or operator shall cover an existing unit with a layer of compacted soil material having a thickness of eighteen inches [45.7 centimeters] or more, and a saturated hydraulic conductivity of 1×10^{-7} centimeters per second or less. A second layer of twelve inches [30.5 centimeters] or more of clay-rich soil material suitable for serving as a plant root zone must be placed over the compacted layer. At least six inches [15.2 centimeters] of suitable plant growth material must be placed over the covered landfill and the facility planted with adapted grasses. The total depth of final cover must be three feet [91.4 centimeters] or more. The requirements of this section may be modified by the department if the permit applicant demonstrates that an alternative design will appropriately limit percolation of liquid into the waste. [The owners or operators of CCR landfills subject to chapter 33.1-20-08 are excluded from the provisions of this section.](#)

1. If the permit applicant wishes to pursue an alternative cover design, one of the following methods shall be used to demonstrate that the alternative cover design will appropriately limit the amount of percolation that may enter the waste:
 - a. Hydrologic modeling;
 - b. Lysimetry or instrumentation using a field-scale test section;
 - c. Comparison of the soil and climatic conditions of the site with the soil and climatic conditions at a site where the department has previously approved the same alternative cover design; or
 - d. Other method approved by the department.
2. To demonstrate that an alternative cover design will appropriately limit percolation of liquid into the waste, the alternative cover design must be shown to limit the average rate of percolation of liquid into wastes to an equal or lower value than the final cover design described in this section or to an average long-term percolation rate less than 0.2 inches [5.0 millimeters] per year.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-08

[RESERVED] DISPOSAL OF COAL COMBUSTION RESIDUALS IN LANDFILLS AND SURFACE IMPOUNDMENTS

Section

- 33.1-20-08-01 Definitions
- 33.1-20-08-02 Applicability
- 33.1-20-08-03 Location Standards
- 33.1-20-08-04 Design Criteria
- 33.1-20-08-05 Operating Criteria
- 33.1-20-08-06 Ground water Monitoring and Corrective Action
- 33.1-20-08-07 Closure and Postclosure Care
- 33.1-20-08-08 Recordkeeping, Notification, and Posting of Information to the Internet

33.1-20-08-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code section 23.1-08-02 and section 33.1-20-01.1-03, except:

1. "Active facility or active electric utilities or independent power producers" means any facility subject to the requirements of this article that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An offsite disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.
2. "Active life or in operation" means the period of operation beginning with the initial placement of solid waste in the solid waste management unit and ending at completion of closure activities in accordance with section 33.1-20-08-07.
3. "Active portion" means that part of the solid waste management unit that has received or is receiving solid waste and that has not completed closure in accordance with section 33.1-20-08-07.
4. "CCR landfill" means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this article, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.
5. "CCR pile" means any noncontainerized accumulation of solid, nonflowing CCR that is placed on the land. Coal combustion residuals that is beneficially used offsite is not a CCR pile.
6. "CCR surface impoundment" means a natural topographic depression, manmade excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.
7. "CCR surface impoundment height" means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.
8. "CCR unit" means a CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraphs in which it is used. This term includes both new and existing units, unless otherwise specified.
9. "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and

receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

10. "Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

11. "Grading" means the placement of CCR only to the extent necessary to create sufficient differences in elevation to support stormwater drainage.

12. "Hazard potential classification" means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or misoperation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high-hazard potential CCR surface impoundment, low-hazard potential CCR surface impoundment, and significant-hazard potential CCR surface impoundment, which terms mean:

a. "High-hazard potential CCR surface impoundment" means a diked surface impoundment where failure or misoperation will probably cause loss of human life.

b. "Low-hazard potential CCR surface impoundment" means a diked surface impoundment where failure or misoperation results in no probable loss of human life and low economic or environmental losses, or both. Losses are principally limited to the surface impoundment owner's property.

c. "Significant-hazard potential CCR surface impoundment" means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

13. "Height" means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

14. "Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015.

15. "In operation" means the same as "active life".

16. "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a ninety-eight percent or greater probability that the acceleration will not be exceeded in fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

17. "New CCR landfill" means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015. Overfills also are considered new CCR landfills.

18. "New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015.
19. "Nonground water releases" means releases from the CCR unit other than the releases directly to the ground water that are detected through the unit's ground water monitoring system. Examples of nonground water releases include seepage through the embankment, minor ponding of seepage at the toe of the embankment of the CCR unit, seepage at the abutments of the CCR unit, seepage from slopes, ponding at the toe of the unit, a release of fugitive dust and releases of a "catastrophic" nature such as the breaching of an impoundment.
20. "Overfill" means a new CCR landfill constructed over a closed CCR surface impoundment.
21. "Pertinent surrounding areas" means all areas of the CCR surface impoundment or immediately surrounding the CCR surface impoundment that have the potential to affect the structural stability and condition of the CCR surface impoundment, including the toe of the downstream slope, the crest of the embankment, abutments, and unlined spillways.
22. "Poor foundation conditions" mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in subsection 3 of section 33.1-20-08-04 would cause a poor foundation condition.
23. "Qualified person" means a person or persons trained to recognize specific appearances of structural weakness and other conditions that are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.
24. "Retrofit" means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in subsection 2 of section 33.1-20-08-04.
25. "Seismic factor of safety" means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a two percent probability of exceedance in fifty years, equivalent to a return period of approximately two thousand five hundred years, based on the United States geological survey seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.
26. "Seismic impact zone" means an area having a two percent or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in fifty years.
27. "Slope protection" means measures installed on the slopes or pertinent surrounding areas of the CCR unit that protect the slope against wave action, erosion, or adverse effects of rapid drawdown. Slope protection includes grassy vegetation and engineered slope protection measures.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-04

33.1-20-08-02. Applicability.

1. The requirements of this chapter apply to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. Unless otherwise provided in this chapter, these requirements also apply to disposal units located offsite of the electric utilities and independent power producers. This chapter also applies to any practice that does not meet the definition of a beneficial use of CCR.
2. This chapter does not apply to CCR landfills that have ceased receiving CCR prior to October 19, 2015.
3. This chapter does not apply to electric utilities and independent power producers that have ceased operating prior to October 19, 2015.
4. This chapter does not apply to wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals. This chapter also does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels, including other fossil fuels, other than coal, for the purpose of generating electricity unless the fuel burned consists of more than fifty percent coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal.
5. This chapter does not apply to practices that meet the definition of a beneficial use of CCR.
6. This chapter does not apply to CCR placement at active or abandoned underground or surface coal mines.
7. This chapter does not apply to municipal solid waste landfills that receive CCR.
8. Owners and operators of CCR units that are subject to this chapter are subject to the solid waste management requirements of this article, unless specifically excluded in other chapters.
9. The owner or operator of an existing CCR unit subject to this chapter, which has a permit that is in effect prior to July 1, 2020, shall apply to the department for a modified permit which meets the requirements of this chapter within twenty-four months of July 1, 2020.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-03. Location standards.

In addition to the general location standards in section 33.1-20-04.1-01, the following must be met:

1. Placement above the uppermost aquifer. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must be constructed with a base that is a minimum of five feet [1.52 meters] above the upper limit of the uppermost aquifer or demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the landfill and the uppermost aquifer due to normal fluctuations in ground water elevations, including the seasonal high water table.
 - a. For a new CCR landfill or surface impoundment or any lateral expansion of a CCR unit, the demonstration that the unit meets the minimum requirements for placement above the uppermost aquifer must be included with the application for a new permit or permit

modification. For an existing CCR surface impoundment, the demonstration must be included with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.

- b. The demonstration is considered complete when the demonstration is approved by the department and placed in the facility's operating record.
- c. An owner or operator of an existing CCR surface impoundment who fails to make the demonstration shall begin closure as required by subparagraph a of paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07.
- d. An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration is prohibited from placing CCR in the CCR unit.

2. Wetlands.

- a. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in wetlands unless the owner or operator demonstrates no later than the date specified in subdivision b that the CCR unit meets the following requirements:
 - (1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR unit is reasonably available that does not involve wetlands.
 - (2) The construction and operation of the CCR unit will not cause or contribute to any of the following:
 - (a) A violation of any applicable state or federal water quality standard;
 - (b) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act; or
 - (c) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973.
 - (3) The CCR unit will not cause or contribute to a significant degradation of wetlands by addressing all of the following factors:
 - (a) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the CCR unit;
 - (b) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR unit;
 - (c) The volume and chemical nature of the CCR;
 - (d) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;
 - (e) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and
 - (f) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent reasonable as required by paragraphs 1 through 3 of subdivision a of subsection 2 of section 33.1-20-08-08, then minimizing unavoidable impacts to the maximum extent reasonable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasoned determination with respect to the demonstrations listed in paragraphs 1 through 4.

b. The owner or operator of the CCR unit shall complete the demonstrations required by subdivision a by the date specified in either paragraph 1 or 2.

(1) For an existing CCR surface impoundment, the owner or operator shall include the demonstration with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall include the demonstration with the application for a new permit or permit modification.

(3) The demonstration is considered complete when the demonstration is approved by the department and placed in the facility's operating record.

(4) An owner or operator of an existing CCR surface impoundment who fails to make the demonstration showing compliance with the requirements of subdivision a by the date specified in paragraph 1 is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07.

(5) For owners or operators of new and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR unit.

3. Fault areas.

a. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located within two hundred feet [60 meters] of the outermost damage zone of a fault that has had displacement in Holocene time unless the owner or operator demonstrates by the dates specified in subdivision c that an alternative setback distance of less than two hundred feet [60 meters] will prevent damage to the structural integrity of the CCR unit.

b. The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or a qualified environmental professional stating that the demonstration meets the requirements of subdivision a.

c. The owner or operator of the CCR unit shall complete the demonstration required by subdivision a by the date specified in either paragraph 1 or 2.

(1) For an existing CCR surface impoundment, the owner or operator shall include the demonstration with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.

- (2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall include the demonstration with the application for a new permit or permit modification.
- (3) The demonstration is considered complete when the demonstration is approved by the department and placed in the facility's operating record.
- (4) An owner or operator of an existing surface impoundment who fails to make the demonstration showing compliance with the requirements of subdivision a by the date specified in paragraph 1 is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07.
- (5) For owners or operators of new and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR unit.

4. Seismic impact zones.

- a. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in seismic impact zones unless the owner or operator demonstrates by the dates specified in subdivision c that all structural components, including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.
- b. The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer or a qualified environmental professional stating that the demonstration meets the requirements of subdivision a.
- c. The owner or operator of the CCR unit shall complete the demonstration required by subdivision a by the date specified in either paragraph 1 or 2.
 - (1) For an existing CCR surface impoundment, the owner or operator shall include the demonstration with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.
 - (2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall include the demonstration with the application for a new permit or permit modification.
 - (3) The demonstration is considered complete when the demonstration is approved by the department and placed in the facility's operating record.
 - (4) An owner or operator of an existing surface impoundment who fails to make the demonstration showing compliance with the requirements of subdivision a of this subsection by the date specified in paragraph 1 is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07.
 - (5) For owners or operators of new and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR unit.

5. Unstable areas.

- a. An existing or new CCR landfill, existing or new CCR surface impoundment, or any lateral expansions of an existing CCR unit must not be located in an unstable area unless the owner or operator demonstrates that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted.
- b. The owner or operator shall consider all of the following factors, at a minimum, when determining whether an area is unstable:
 - (1) Onsite or local soil conditions that may result in significant differential settling;
 - (2) Onsite or local geologic or geomorphologic features; and
 - (3) Onsite or local human-made features or events (both surface and subsurface)
- c. The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer or a qualified environmental professional stating that the demonstration meets the requirements of subdivision a.
- d. The owner or operator of the CCR unit shall complete the demonstration required by subdivision a by the date specified in either paragraph 1 or 2.
 - (1) For an existing CCR landfill or surface impoundment, the demonstration must be included with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.
 - (2) For a new CCR landfill or surface impoundment or any lateral expansion of a CCR landfill or surface impoundment, the demonstration must be included with the application for a new permit or permit modification.
 - (3) The demonstration is considered complete when the demonstration is approved by the department and placed in the facility's operating record.
 - (4) For owners or operators of an existing CCR surface impoundment or CCR landfill that fails to demonstrate compliance by the date required in paragraph 1, the CCR landfill is subject to the requirements in paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07 or paragraph 1 of subdivision d of subsection 2 of section 33.1-20-08-07, respectively.
 - (5) For owners or operators of new CCR units and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR landfill.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-04. Design criteria.

1. New CCR landfills and any lateral expansion of a CCR landfill must be designed, constructed, operated, and maintained with the appropriate hydraulic barrier and leachate management system capable of collecting and removing leachate and contaminated surface water within the disposal unit during the operating period and postclosure period.
 - a. Prior to construction of an overfill, the underlying CCR surface impoundment must meet the requirements of subdivision d of subsection 3 of section 33.1-20-08-07.

- b. Prior to construction of the CCR landfill or any lateral expansion of the CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer and approval by the department that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system meets the requirements of this subsection.
- c. Upon completion of construction of the CCR landfill or any lateral expansion of the CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer and approval by the department that the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system has been constructed in accordance with the requirements of this subsection.
- d. A composite liner is required. The liner must consist of at least two feet [60.9 centimeters] of recompacted clay with a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second overlain with at least a sixty mil flexible membrane liner. The composite liner must be:
- (1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the CCR or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;
 - (2) Constructed of materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;
 - (3) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and
 - (4) Installed to cover all surrounding earth likely to be in contact with the CCR or leachate.
- e. The department may consider an alternative composite liner if all of the requirements of this subdivision are met. A certification must be obtained from a qualified professional engineer stating that:
- (1) The alternative composite liner consists of two components; the upper component consisting of, at a minimum, a sixty-mil flexible membrane liner, and a lower component, that is not a flexible membrane liner. If the lower component of the alternative liner is compacted soil, the flexible membrane liner must be installed in direct and uniform contact with the compacted soil.
 - (2) The transmissivity through the lower component of the alternative composite liner is no greater than the transmissivity through two feet [60.9 centimeters] of compacted soil with a hydraulic conductivity of 1×10^{-7} centimeters per second.
 - (3) The hydraulic conductivity for the two feet [60.9 centimeters] of compacted soil used in the comparison shall be no greater than 1×10^{-7} centimeters per second.
 - (4) The hydraulic conductivity of any alternative to the two feet [60.9 centimeters] of compacted soil must be determined using recognized and generally accepted good engineering practices.
 - (5) The transmissivity comparison must be made using this equation, which is derived from Darcy's Law for gravity flow through porous media:

$$\frac{Q}{A} = q = k \left(\frac{h}{t} + 1 \right)$$

Where:

Q = flow rate (cubic centimeters/second);

A = surface area of the liner (squared centimeters);

q = flow rate per unit area (cubic centimeters/second/squared centimeter);

k = hydraulic conductivity of the liner (centimeters/second);

h = hydraulic head above the liner (centimeters); and

t = thickness of the liner (centimeters).

(6) The alternative composite liner must meet the requirements specified in paragraphs 1 through 4 of subdivision d.

f. The drainage layer must be designed and operated to minimize clogging during the active life and post-closure care period and have a hydraulic conductivity of 1×10^{-3} centimeters per second or greater throughout. The drainage layer must have a sufficient thickness to provide a transmissivity of 3×10^{-2} centimeters squared per second or greater.

g. The liner and leachate removal system must be compatible with the waste and leachate.

h. The liner and leachate removal system must maintain its integrity during the operating period and through postclosure period.

i. The system must have a collection efficiency of ninety percent or better and must be capable of maintaining a hydraulic head of less than twelve inches [30.5 centimeters] above the liner.

j. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of at least ninety-eight and one-half percent or better for collection or rejection of the precipitation that falls on the site.

2. Liner design criteria for CCR surface impoundments.

a. For existing CCR surface impoundments:

(1) No later than twenty-four months after July 1, 2020, the owner or operator of an existing CCR surface impoundment shall include with the application for a permit modification that meets the requirements of this chapter, as required by subsection 9 of section 33.1-20-08-02, documentation that such CCR unit was constructed with one of the following:

(a) A composite liner that meets the requirements of subdivision d of subsection 1;

(b) An alternative composite liner that meets the requirements of subdivision e of subsection 1 or is demonstrated, using recognized and generally accepted good engineering practices, to have a total flux rate through the liner equal to or less than the flux rate through a liner that meets the requirements of subdivision d of subsection 1.

(2) The hydraulic conductivity of the compacted soil must be determined using recognized and generally accepted good engineering practices.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(a) The owner or operator of the CCR unit determines that it is not constructed with a liner that meets the requirements of paragraph 1; or

(b) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraph 1.

(4) All existing unlined CCR surface impoundments are subject to the requirements of subdivision a of subsection 2 of section 33.1-20-08-07.

(5) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer and approval from the department that an existing CCR unit meets the requirements of this section.

b. New CCR surface impoundments and lateral expansions of existing and new CCR surface impoundments must be designed, constructed, operated, and maintained with a composite liner that meets the requirements of subdivision d of subsection 1. The department may consider an alternative liner that meets the requirements of subdivision e of subsection 1:

(1) Any liner specified in this section must be installed to cover all surrounding earth likely to be in contact with CCR. Dikes shall not be constructed on top of the composite liner.

(2) The owner or operator shall include certification from a qualified professional engineer that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of this section, with the application for a new permit or permit modification.

(3) Upon completion, the owner or operator shall obtain certification from a qualified professional engineer that the composite liner or if applicable, the alternative composite liner has been constructed in accordance with the requirements of this section.

3. Structural integrity criteria for existing CCR surface impoundments, new CCR surface impoundments, and lateral expansions of CCR surface impoundments.

a. The requirements of paragraph 1 in this subdivision apply to all CCR surface impoundments. The requirements in paragraphs 2 through 4 of this subdivision apply to all CCR surface impoundments, except for those CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified (e.g., a dike is constructed) such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of this section.

(1) The owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet [1.8 meters] high, showing the permit number of the CCR unit, the name associated with the CCR unit, and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments:

(a) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the time frames specified in paragraph f. The owner or operator shall document the hazard potential classification of each CCR unit as either a high-hazard

potential CCR surface impoundment, a significant-hazard potential CCR surface impoundment, or a low-hazard potential CCR surface impoundment. The owner or operator also shall document the basis for each hazard potential classification.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the hazard potential classifications specified in this section were conducted in accordance with the requirements of this section.

(3) Emergency action plan (EAP):

(a) Development of the plan. No later than the time frames specified in paragraph f, the owner or operator of a CCR unit determined to be either a high-hazard potential or significant-hazard potential CCR surface impoundment under periodic hazard potential classification assessments shall prepare and maintain a written EAP. The original EAP and any amendments to the EAP must be approved by the department and placed in the facility's operating record. At a minimum, the EAP must:

[1] Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

[2] Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

[3] Provide contact information of emergency responders;

[4] Include a map which delineates the downstream area that would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

[5] Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(b) Amendment of the plan:

[1] The owner or operator of a CCR unit that is required to have a written EAP may amend the written EAP at any time. The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

[2] The written EAP must be evaluated, at a minimum, every five years to ensure the required information is accurate. As necessary, the EAP must be updated and a revised EAP placed in the facility's operating record.

(c) Changes in hazard potential classification:

[1] If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high-hazard potential CCR surface impoundment or a significant-hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic

hazard potential assessment documentation is placed in the facility's operating record.

[2] If the owner or operator of a CCR unit classified as a low-hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly reclassified as either a high-hazard potential CCR surface impoundment or a significant-hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare a written EAP for the CCR unit within six months of completing such periodic hazard potential assessment.

(d) The owner or operator of the CCR unit shall submit the written EAP, and any subsequent amendment of the EAP to the department for approval.

(e) Activation of the EAP. The EAP must be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The slopes and pertinent surrounding areas of the CCR unit must be designed, constructed, operated, and maintained with one of the forms of slope protection specified in subparagraph a that meets all of the performance standards of subparagraph b.

(a) Slope protection must consist of one of the following:

[1] A vegetative cover consisting of grassy vegetation;

[2] An engineered cover consisting of a single form or combination of forms of engineered slope protection measures; or

[3] A combination of vegetative cover and engineered cover.

(b) Any form of cover for slope protection must meet all of the following performance standards:

[1] The cover must be installed and maintained on the slopes and pertinent surrounding areas of the CCR unit;

[2] The cover must provide protection against surface erosion, wave action, and adverse effects of rapid drawdown;

[3] The cover must be maintained to allow for the observation of and access to the slopes and pertinent surrounding areas during routine and emergency events;

[4] Woody vegetation must be removed from the slopes or pertinent surrounding areas. Any removal of woody vegetation with a diameter greater than one-half inch [12.7 millimeters] must be directed by a person familiar with the design and operation of the unit and in consideration of the complexities of removal of a tree or a shrubbery, who must ensure the removal does not create a risk of destabilizing the unit or otherwise adversely affect the stability and safety of the CCR unit or personnel undertaking the removal; and

[5] The vegetative height of grassy and woody vegetation must be maintained at a height that will not be detrimental to the native grass cover.

b. The requirements of subdivisions c through e apply to an owner or operator of a CCR surface impoundment that either:

(1) Has a height of five feet [1.5 meters] or more and a storage volume of twenty acre-feet [24670 cubic meters] or more; or

(2) Has a height of twenty feet [6.1 meters] or more.

c. No later than in the time frames specified in paragraph f for an existing impoundment, or included with the application for a permit for a new CCR unit or permit modification for lateral expansion of a CCR unit, the owner or operator of the CCR unit shall compile, to the extent feasible, the information specified below:

(1) The name and address of the owner or operator of the CCR unit, the name associated with the CCR unit, and the permit number.

(2) The location of the CCR unit identified on the most recent United States geological survey 7.5-minute or 15-minute topographic quadrangle map, or a topographic map of equivalent scale if a United States geological survey map is not available.

(3) A statement of the purpose for which the CCR unit is being used.

(4) The name and size in acres of the watershed within which the CCR unit located.

(5) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(6) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(7) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or misoperation.

(8) A description of the type, purpose, and location of existing instrumentation.

(9) Area-capacity curves for the CCR unit.

(10) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(11) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(12) Any record or knowledge of structural instability of the CCR unit.

(13) Changes to the history of construction. If there is a significant change to any information required in this subdivision, the owner or operator of the CCR unit shall update the relevant information, notify the department, and place it in the facility's operating record.

d. Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment must, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(a) Stable foundations and abutments:

(b) Slope protection consistent with the requirements under paragraph 4 of subdivision a;

(c) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(d) Vegetated slopes of dikes and surrounding areas must be maintained at a height above the slope of the dike that will not be detrimental to the native grass cover, except for slopes which have an alternate form or forms of slope protection;

(e) A single spillway or a combination of spillways configured as stated below. The combined capacity of all spillways must be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified below.

[1] All spillways must be either:

[a] Of nonerodible construction and designed to carry sustained flows;
or

[b] Earth- or grass-lined and designed to carry short-term, infrequent flows at nonerosive velocities where sustained flows are not expected.

[2] The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

[a] Probable maximum flood for a high-hazard potential CCR surface impoundment;

[b] One thousand-year flood for a significant-hazard potential CCR surface impoundment; or

[c] One hundred-year flood for a low-hazard potential CCR surface impoundment.

(f) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of

significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(g) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream, or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic structural stability assessment described in this subdivision must identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator of the CCR unit must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of this section.

e. Periodic safety factor assessments.

(1) The owner or operator shall conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified below for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments must be supported by appropriate engineering calculations.

(a) The calculated static factor of safety under the long-term, maximum storage pool loading condition must equal or exceed 1.50.

(b) The calculated static factor of safety under the maximum surcharge pool loading condition must equal or exceed 1.40.

(c) The calculated seismic factor of safety must equal or exceed 1.00.

(d) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety must equal or exceed 1.20.

(e) For new CCR surface impoundments and lateral expansions of a CCR impoundment, the calculated static factor of safety under the end-of-construction loading condition must equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in this section meets the requirements of this section.

f. Time frames for periodic assessments.

(1) Initial assessment. Except as provided in this subdivision, the owner or operator of an existing CCR unit shall complete and include the initial assessments required by

this section with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02, or for a new CCR unit or lateral expansion of a CCR unit, with the application for a new permit or permit modification. The owner or operator has completed an initial assessment when the assessment has been approved by the department placed in the facility's operating record.

(2) The owner or operator of an existing CCR surface impoundment may elect to use a previously completed assessment to serve as the initial assessment required by this section, provided that the previously completed assessment:

(a) Was completed no earlier than April 17, 2013; and

(b) Meets the applicable requirements of this section.

(3) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct and complete the assessments required by this section every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment in lieu of the initial assessment, the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of this section, the owner or operator has completed an assessment when the relevant assessment has been approved by the department and placed in the facility's operating record.

(4) Failure to document minimum safety factors during the initial assessment for new CCR surface impoundments or lateral expansions of a CCR surface impoundment. Until an owner or operator of a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in paragraph 1 of subdivision e, the owner or operator is prohibited from placing CCR in such unit.

(5) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by this section is subject to the closure requirements of subdivision b of subsection 2 of section 33.1-20-08-07.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-05. Operating criteria.

1. Air criteria.

a. The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall adopt measures that will effectively minimize CCR from becoming airborne at the facility, including CCR fugitive dust originating from CCR units, roads, and other CCR management and material handling activities.

b. Coal combustion residuals fugitive dust control plan. The owner or operator of the CCR unit shall prepare and operate in accordance with a CCR fugitive dust control plan as

specified in paragraphs 1 through 6. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act.

(1) The CCR fugitive dust control plan shall identify and describe the CCR fugitive dust control measures the owner or operator will use to minimize CCR from becoming airborne at the facility. The owner or operator shall select, and include in the CCR fugitive dust control plan, the CCR fugitive dust control measures that are most appropriate for site conditions, along with an explanation of how the measures selected are applicable and appropriate for site conditions. Examples of control measures that may be appropriate include: Locating CCR inside an enclosure or partial enclosure; operating a water spray or fogging system; reducing fall distances at material drop points; using wind barriers, compaction, or vegetative covers; establishing and enforcing reduced vehicle speed limits; paving and sweeping roads; covering trucks transporting CCR; reducing or halting operations during high wind events; or applying a daily cover.

(2) If the owner or operator operates a CCR landfill or any lateral expansion of a CCR landfill, the CCR fugitive dust control plan shall include procedures to emplace CCR as conditioned CCR. Conditioned CCR means wetting CCR with water to a moisture content that will prevent wind dispersal but will not result in free liquids. In lieu of water, CCR conditioning may be accomplished with an appropriate chemical dust suppression agent.

(3) The CCR fugitive dust control plan must include procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.

(4) The CCR fugitive dust control plan must include a description of the procedures the owner or operator will follow to periodically assess the effectiveness of the control plan.

(5) The owner or operator of an existing CCR unit shall include an initial CCR fugitive dust control plan for the facility with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02. For new CCR units or lateral expansions of CCR units, the fugitive dust control plan must be included with the application for a new permit or permit modification. The owner or operator has completed the initial CCR fugitive dust control plan when the plan has been approved by the department and placed in the facility's operating record.

(6) Amendment of the plan. The owner or operator of a CCR unit subject to the requirements of this section may amend the written CCR fugitive dust control plan at any time with approval by the department, provided the revised plan is placed in the facility's operating record. The owner or operator shall amend the written plan whenever there is a change in conditions that would substantially affect the written plan in effect, such as the construction and operation of a new CCR unit.

c. Annual CCR fugitive dust control report. The owner or operator of a CCR unit shall prepare an annual CCR fugitive dust control report that includes a description of the actions taken by the owner or operator to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The annual CCR fugitive dust control report shall be included with the facility's annual report required by subsection 4 of section 33.1-20-04.1-04. For purposes of this subdivision, the owner or operator has completed the annual CCR fugitive dust control report when the annual report has been submitted to the department and placed in the facility's operating record.

2. Run-on and run-off controls for CCR landfills.

a. The owner or operator of an existing or new CCR landfill or any lateral expansion of a CCR landfill shall design, construct, operate, and maintain:

- (1) A run-on control system to prevent flow onto the active portion of the CCR unit during the peak discharge from a twenty-four-hour, twenty-five-year storm; and
- (2) A run-off control system from the active portion of the CCR unit to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.

b. Run-off from the active portion of the CCR unit must be handled in accordance with the surface water requirements in chapters 33.1-16-01 and 33.1-16-02.1.

c. Run-on and run-off control system plan:

(1) Content of the plan. The owner or operator shall prepare initial and periodic run-on and run-off control system plans for the CCR unit according to the time frames specified in this subsection. These plans must document how the run-on and run-off control systems have been designed and constructed to meet the applicable requirements of this subsection. Each plan must be supported by appropriate engineering calculations. The owner or operator has completed the initial run-on and run-off control system plan when the plan has been approved by the department and placed in the facility's operating record.

(2) Amendment of the plan. The owner or operator may amend the written run-on and run-off control system plan at any time provided the revised plan is placed in the facility's operating record. The owner or operator shall amend the written run-on and run-off control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Time frames for preparing the initial plan.

(a) Existing CCR landfills. The owner or operator of the CCR unit shall include the initial run-on and run-off control system plan with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.

(b) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator shall include the initial run-on and run-off control system plan with the application for a new permit or permit modification.

(4) Frequency for revising the plan. The owner or operator of the CCR unit shall prepare periodic run-on and run-off control system plans required by paragraph 1 every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first subsequent plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. The owner or operator has completed a periodic run-on and run-off control system plan when the plan has been approved by the department and placed in the facility's operating record.

3. Hydrologic and hydraulic capacity requirements for CCR surface impoundments.

a. The owner or operator of an existing or new CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall design, construct, operate, and maintain an inflow design flood control system as specified in paragraphs 1 and 2.

(1) The inflow design flood control system must adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in paragraph 3.

(2) The inflow design flood control system must adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in paragraph 3.

(3) The inflow design flood is:

(a) For a high-hazard potential CCR surface impoundment, as determined under subdivision a of subsection 3 of section 33.1-20-08-04, the probable maximum flood;

(b) For a significant-hazard potential CCR surface impoundment, as determined under subdivision a of subsection 3 of section 33.1-20-08-04, the one thousand-year flood;

(c) For a low-hazard potential CCR surface impoundment, as determined under subdivision a of subsection 3 of section 33.1-20-08-04, the one hundred-year flood; or

(d) For an incised CCR surface impoundment, the twenty-five-year flood.

b. Discharge from the CCR unit must be handled in accordance with the surface water requirements under chapters 33.1-16-01 and 33.1-16-02.1.

c. Inflow design flood control system plan:

(1) Content of the plan. The owner or operator shall prepare initial and periodic inflow design flood control system plans for the CCR unit according to the time frames specified in this subdivision. These plans must document how the inflow design flood control system has been designed and constructed to meet the requirements of this section. Each plan must be supported by appropriate engineering calculations. The owner or operator of the CCR unit has completed the inflow design flood control system plan when the plan has been approved by the department and placed in the facility's operating record.

(2) Amendment of the plan. The owner or operator of the CCR unit may amend the written inflow design flood control system plan at any time provided the revised plan is approved by the department and placed in the facility's operating record. The owner or operator must amend the written inflow design flood control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Time frames for preparing the initial plan:

(a) Existing CCR surface impoundments. The owner or operator of the CCR unit shall include the initial inflow design flood control system plan with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.

(b) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator must include the initial inflow design flood control system plan with the application for a new permit or permit modification.

(4) Frequency for revising the plan. The owner or operator shall prepare periodic inflow design flood control system plans every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first periodic plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of this paragraph, the owner or operator has completed an inflow design flood control system plan when the plan has been approved by the department and placed in the facility's operating record.

4. Inspection requirements for CCR surface impoundments.

a. Inspections by a qualified person.

(1) All CCR surface impoundments and any lateral expansion of a CCR surface impoundment must be examined by a qualified person as follows:

(a) Inspect at least once each calendar week for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit;

(b) Inspect at least once each calendar week the discharge of all outlets of hydraulic structures which pass underneath the base of the surface impoundment or through the dike of the CCR unit for abnormal discoloration, flow, or discharge of debris or sediment; and

(c) Monitor at least once each calendar month all CCR unit instrumentation.

(d) The results of the inspection by a qualified person must be recorded in the facility's operating record.

(2) Time frames for inspections by a qualified person.

(a) Existing CCR surface impoundments. The owner or operator of the CCR unit shall initiate the inspections by a qualified person no later than one week after July 1, 2020, for weekly inspections and one month after July 1, 2020, for monthly inspections.

(b) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall initiate the inspections by a qualified person upon initial receipt of CCR by the CCR unit.

b. Annual inspections by a qualified professional engineer.

(1) If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under subdivision d subsection 3 of section 33.1- 20-08-04, the CCR unit must additionally be inspected on a periodic basis by a qualified professional engineer to ensure the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices. The inspection, at a minimum, must include:

(a) A review of available information regarding the status and condition of the CCR unit, including files available in the operating record (e.g., CCR unit design and construction information, previous periodic structural stability assessments, the results of inspections by a qualified person, and results of previous annual inspections);

(b) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit and appurtenant structures; and

(c) A visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit for structural integrity and continued safe and reliable operation.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses:

(a) Any changes in geometry of the impounding structure since the previous annual inspection;

(b) The location and type of existing instrumentation and the maximum recorded readings of each instrument since the previous annual inspection;

(c) The approximate minimum, maximum, and present depth and elevation of the impounded water and CCR since the previous annual inspection;

(d) The storage capacity of the impounding structure at the time of the inspection;

(e) The approximate volume of the impounded water and CCR at the time of the inspection;

(f) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit and appurtenant structures; and

(g) Any other changes which may have affected the stability or operation of the impounding structure since the previous annual inspection.

(3) Time frames for conducting the initial inspection.

(a) Existing CCR surface impoundments. The owner or operator of the CCR unit shall complete the initial inspection by a qualified professional engineer no later than one year after July 1, 2020.

(b) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall complete the initial annual inspection by a qualified professional engineer no later than fourteen months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections.

(a) Except as provided for in subparagraph b, the owner or operator of the CCR unit shall conduct the inspections required section on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating

record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this paragraph, the owner or operator has completed an inspection when the inspection report has been submitted to the department and placed in the facility's operating record.

(b) In any calendar year in which both the periodic inspection by a qualified professional engineer and the quinquennial (occurring every five years) structural stability assessment by a qualified professional engineer required by subdivision d of subsection 3 of section 33.1-20-08-04 are required to be completed, the annual inspection is not required, provided the structural stability assessment is completed during the calendar year. In the year following the quinquennial structural stability assessment, the deadline for completing the next annual inspection is one year from the date of completing the quinquennial structural stability assessment.

(5) If a deficiency or release is identified during an inspection, the owner or operator shall notify the department and remedy the deficiency or release in accordance with applicable requirements in subsections 6 through 9 of section 33.1-20-08-06.

5. Inspection requirements for CCR landfills.

a. Inspections by a qualified person.

(1) All CCR landfills and any lateral expansion of a CCR landfill must be examined by a qualified person as follows:

(a) Inspect weekly for any appearances of actual or potential structural weakness and other conditions that are disrupting or have the potential to disrupt the operation or safety of the CCR unit; and

(b) The results of the inspection by a qualified person must be recorded in the facility's operating record.

(2) Time frames for inspections by a qualified person.

(a) Existing CCR landfills. The owner or operator of the CCR unit shall initiate the inspections by a qualified person no later than one week after July 1, 2020.

(b) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall initiate the inspections by a qualified person upon initial receipt of CCR by the CCR unit.

b. Annual inspections by a qualified professional engineer.

(1) Existing and new CCR landfills and any lateral expansion of a CCR landfill must be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices. The inspection must, at a minimum, include:

(a) A review of available information regarding the status and condition of the CCR unit, including files available in the operating record (e.g., the results of inspections by a qualified person, and results of previous annual inspections); and

(b) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(a) Any changes in geometry of the structure since the previous annual inspection;

(b) The approximate volume of CCR contained in the unit at the time of the inspection;

(c) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit; and

(d) Any other changes which may have affected the stability or operation of the CCR unit since the previous annual inspection.

(3) Time frames for conducting the initial inspection.

(a) Existing CCR landfills. The owner or operator of the CCR unit shall complete the initial inspection by a qualified professional engineer no later than one year after July 1, 2020.

(b) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall complete the initial annual inspection by a qualified professional engineer no later than fourteen months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections. The owner or operator of the CCR unit shall conduct the inspection required by this subdivision on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this paragraph, the owner or operator has completed an inspection when the inspection report has been submitted to the department and placed in the facility's operating record.

(5) If a deficiency or release is identified during an inspection, the owner or operator shall notify the department and remedy the deficiency or release in accordance with applicable requirements in subsections 6 through 9 of section 33.1-20-08-06.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-06. Ground water monitoring and corrective action.

1. Applicability.

a. Existing CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the ground water monitoring and corrective action requirements of this section, except as provided in subdivision f.

b. Initial time frames.

(1) Existing CCR landfills and existing CCR surface impoundments. The owner or operator of the CCR unit shall include with the permit modification application required by subsection 9 of section 33.1-20-08-02, a ground water monitoring plan showing compliance with the following ground water monitoring requirements:

(a) Install the ground water monitoring system as required by subsection 2;

(b) Develop the ground water sampling and analysis program to include selection of the statistical procedures to be used for evaluating ground water monitoring data as required by subsection 3;

(c) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by subsection 4; and

(d) Begin evaluating the ground water monitoring data for statistically significant increases over background levels for the constituents listed in appendix I of this chapter as required by subsection 4.

(2) New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units. The owner or operator shall include a ground water monitoring plan with the application for a new permit or permit modification to show compliance with the ground water monitoring requirements specified in subparagraphs a and b of paragraph 1 prior to initial receipt of CCR by the CCR unit. In addition, the owner or operator of the CCR unit shall initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by subsection 4.

c. Once a ground water monitoring system and ground water monitoring program has been established at the CCR unit as required by this section, the owner or operator shall conduct ground water monitoring and, if necessary, corrective action throughout the active life and postclosure care period of the CCR unit.

d. In the event of a release from a CCR unit, the owner or operator immediately shall take all necessary measures to control the source of the release so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit shall comply with all applicable requirements in subsections 6 through 8, or, if eligible, must comply with the requirements in subsection 9.

e. Annual ground water monitoring and corrective action report. For existing CCR landfills and existing CCR surface impoundments, no later than January thirty-first of the year following July 1, 2020, and January thirty-first of each year thereafter, the owner or operator must prepare an annual ground water monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator must prepare the initial annual ground water monitoring and corrective action report no later than January thirty-first of the year following the calendar year a ground water monitoring system has been established, and January thirty-first of each year thereafter. For the preceding calendar year, the annual report must document the status of the ground water monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this section, the owner or operator has prepared the annual report when the report is placed in the facility's operating record. The annual report must be submitted to the department for approval and placed on the facility's publicly accessible internet site by March first of each year. At a minimum, the annual

ground water monitoring and corrective action report must contain the following information, to the extent available:

- (1) A map, aerial image, or diagram showing the CCR unit and all background (or upgradient) and downgradient monitoring wells, to include the well identification numbers, that are part of the ground water monitoring program for the CCR unit;
- (2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;
- (3) In addition to all the monitoring data obtained under this section, a summary including the number of ground water samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;
- (4) A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituents detected at a statistically significant increase over background levels); and
- (5) Other information required to be included in the annual report as specified in this section.

f. Suspension of ground water monitoring requirements.

- (1) The department may suspend the ground water monitoring requirements of this section for a CCR unit for up to ten years if the owner or operator provides written documentation that there is no potential for migration of the constituents listed in appendices I and II to this chapter from that CCR unit to the uppermost aquifer during the active life of the CCR unit and the postclosure care period. This demonstration must be certified by a qualified professional engineer and approved by the department, and must be based upon:
 - (a) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, including at a minimum, the information necessary to evaluate or interpret the effects of the following properties or processes on contaminant fate and transport:
 - [1] Aquifer characteristics, including hydraulic conductivity, hydraulic gradient, effective porosity, aquifer thickness, degree of saturation, stratigraphy, degree of fracturing and secondary porosity of soils and bedrock, aquifer heterogeneity, ground water discharge, and ground water recharge areas;
 - [2] Waste characteristics, including quantity, type, and origin;
 - [3] Climatic conditions, including annual precipitation, leachate generation estimates, and effects on leachate quality;
 - [4] Leachate characteristics, including leachate composition, solubility, density, the presence of immiscible constituents, Eh, and pH; and
 - [5] Engineered controls, including liners, cover systems, and aquifer controls (e.g., lowering the water table). These must be evaluated under design and failure conditions to estimate their long-term residual performance.

(b) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(2) The owner or operator of the CCR unit may secure an additional ten years for the suspension of the ground water monitoring requirements provided the owner or operator provides written documentation that there continues to be no potential for migration. The documentation must be supported by, at a minimum, by the same information required for the initial monitoring suspension and must be certified by a qualified professional engineer and approved by the department. The owner or operator shall submit the documentation of their re-demonstration for the department's review and approval of their extension one year before their ground water monitoring suspension is due to expire. If the existing ground water monitoring extension expires, the owner or operator shall begin ground water detection monitoring according to this section within ninety days. The owner or operator may obtain additional ten-year ground water monitoring suspensions provided the owner or operator continues to make the written demonstration. The owner or operator shall place each completed demonstration, if more than one ten-year suspension period is sought, in the facility's operating record.

2. Ground water monitoring systems.

a. Performance standard. The owner or operator of a CCR unit shall install a ground water monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) Accurately represent the quality of background ground water that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:

(a) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or

(b) Sampling at other wells will provide an indication of background ground water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of ground water passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of ground water contamination in the uppermost aquifer. All potential contaminant pathways must be monitored.

b. The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that must include thorough characterization of:

(1) Aquifer thickness, ground water flow rate, ground water flow direction including seasonal and temporal fluctuations in ground water flow; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

c. The ground water monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in paragraph a, based on

the site-specific information specified in paragraph b. The ground water monitoring system must contain:

- (1) A minimum of one upgradient and three downgradient monitoring wells; and
- (2) Additional monitoring wells as necessary to accurately represent the quality of background ground water that has not been affected by leakage from the CCR unit and the quality of ground water passing the waste boundary of the CCR unit.

d. The owner or operator of multiple CCR units may install a multiunit ground water monitoring system instead of separate ground water monitoring systems for each CCR unit.

(1) The multiunit ground water monitoring system must be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual ground water monitoring system for each CCR unit based on the following factors:

- (a) Number, spacing, and orientation of each CCR unit;
- (b) Hydrogeologic setting;
- (c) Site history; and
- (d) Engineering design of the CCR unit.

e. Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground water samples. The annular space (i.e., the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator of the CCR unit shall document and include in the ground water monitoring plan and the operating record the design, installation, development, and decommissioning of any monitoring wells; piezometers; and other measurement, sampling, and analytical devices.

(2) The monitoring wells; piezometers; and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

f. The owner or operator shall provide documentation in the ground water monitoring plan that the ground water monitoring system has been designed and constructed to meet the requirements of this section. If the ground water monitoring system includes the minimum number of monitoring wells specified in this subsection, the ground water monitoring plan must document the basis for supporting this determination. Any proposed changes to the ground water monitoring plan must be submitted to, and approved by, the department.

3. Ground water sampling and analysis requirements.

a. The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the background and downgradient wells. The owner or operator of the CCR unit must develop a sampling and analysis program that includes procedures and techniques for:

- (1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground water samples. For purposes of this section, the term constituent refers to both hazardous constituents and other monitoring parameters listed in either appendix I or II of this chapter.

c. Ground water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator of the CCR unit shall determine the rate and direction of ground water flow each time ground water is sampled. Ground water elevations in wells which monitor the same CCR management area must be measured within a period of time short enough to avoid temporal variations in ground water flow which could preclude accurate determination of ground water flow rate and direction.

d. The owner or operator of the CCR unit shall establish background ground water quality in hydraulically upgradient or background wells for each of the constituents required in the particular ground water monitoring program that applies to the CCR unit as determined under subsections 4 or 5. Background ground water quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of paragraph 1 of subdivision a of subsection 2.

e. The number of samples collected when conducting detection monitoring and assessment monitoring, for both downgradient and background wells, must be consistent with the statistical procedures chosen under subdivision f and the performance standards under subdivision g of this subsection. The sampling procedures must be those specified under subsection 4 for detection monitoring, subsection 5 for assessment monitoring, and subsection 6 for corrective action monitoring.

f. The owner or operator of the CCR unit shall select one of the statistical methods specified in paragraphs 1 through 5 to be used in evaluating ground water monitoring data for each specified constituent. The statistical test chosen must be conducted separately for each constituent in each monitoring well.

(1) A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure, in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of subdivision g.

(6) The owner or operator of the CCR unit shall include documentation in the ground water monitoring plan showing that the selected statistical method is appropriate for evaluating the ground water monitoring data for the CCR management area. The documentation must include a narrative description of the statistical method selected to evaluate the ground water monitoring data.

g. Any statistical method chosen must comply with the following performance standards, as appropriate, based on the statistical test method used:

(1) The statistical method used to evaluate ground water monitoring data must be appropriate for the distribution of constituents. Normal distributions of data values must use parametric methods. Nonnormal distributions must use nonparametric methods. If the distribution of the constituents is shown by the owner or operator of the CCR unit to be inappropriate for a normal theory test, then the data must be transformed or a distribution-free (nonparametric) theory test must be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground water protection standard, the test must be done at a type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the type I experiment wise error rate for each testing period must be no less than 0.05; however, the type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground water monitoring data, the specific type of control chart and its associated parameter values must be such that this approach is at least as effective as any other approach in this section for evaluating ground water data. The parameter values must be determined after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be such that this approach is at least as effective as any other approach in this section for evaluating ground water data. These parameters must be determined after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method must account for data below the limit of detection with one or more statistical procedures that shall be at least as effective as any other approach in this section for evaluating ground water data. Any practical quantization limit that is used in the statistical method must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

h. The owner or operator of the CCR unit shall determine if there is a statistically significant increase over background values for each constituent required in the particular ground water monitoring program that applies to the CCR unit.

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality of each constituent at each downgradient monitoring well to the background value of that constituent, according to the statistical procedures and performance standards specified under subdivisions f and g.

(2) Within ninety days after completing sampling and analysis, the owner or operator shall determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.

i. The owner or operator must measure "total recoverable metals" concentrations in measuring ground water quality. Measurement of total recoverable metals captures both the particulate fraction and dissolved fraction of metals in natural waters. ground water samples may not be field-filtered prior to analysis.

4. Detection monitoring program.

a. The owner or operator of a CCR unit shall conduct detection monitoring at all ground water monitoring wells consistent with this subsection. At a minimum, a detection monitoring program must include ground water monitoring for all constituents listed in appendix I to this chapter.

b. Except as provided in subdivision d, the monitoring frequency for the constituents listed in appendix I to this chapter must be at least semiannual during the active life of the CCR unit and the postclosure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well must be collected and analyzed for the constituents listed in appendices I and II to this chapter no later than six months after July 1, 2020. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, a minimum of eight independent samples for each background well must be collected and analyzed for the constituents listed in appendices I and II to this chapter during the first six months of sampling, if not already completed.

c. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with subdivision e of subsection 3 and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well.

d. The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix I to this chapter during the active life and the postclosure care period based on the availability of ground water. If there is not adequate ground water flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis and approved by the department. The demonstration must be supported by:

(1) Information documenting that the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone; and

(c) Ground water flow rates.

- (2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a time frame that will not materially delay establishment of an assessment monitoring program.
- (3) The owner or operator must obtain approval by the department for an alternative ground water sampling and analysis frequency. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency in the annual ground water monitoring and corrective action report required by this section.

e. If the owner or operator of the CCR unit determines that there is a statistically significant increase over background levels for one or more of the constituents listed in appendix I to this chapter at any monitoring well at the waste boundary the owner or operator shall:

- (1) Except as provided for in paragraph 2, within ninety days of detecting a statistically significant increase over background levels for any constituent, notify the department and establish an assessment monitoring program meeting the requirements of subsection 5.
- (2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. The owner or operator shall complete the written demonstration within ninety days of detecting a statistically significant increase over background levels. If a successful demonstration is completed within the ninety-day period, the owner or operator of the CCR unit shall continue with a detection monitoring program under this section, with approval by the department. If a successful demonstration is not completed within the ninety-day period, the owner or operator of the CCR unit shall initiate an assessment monitoring program as required under subsection 5. The owner or operator also shall include the demonstration in the annual ground water monitoring and corrective action report.
- (3) The owner or operator of a CCR unit shall prepare a notification stating that an assessment monitoring program has been established. The owner or operator has completed the notification when the notification is submitted to the department and placed in the facility's operating record.

5. Assessment monitoring program.

- a. Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix I to this chapter.
- b. Within ninety days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit shall sample and analyze the ground water for all constituents listed in appendix II to this chapter. The number of samples collected and analyzed for each well during each sampling event must be consistent with subdivision e of subsection 3, and must account for any unique characteristics of the site, but must be at least one sample from each well.
- c. The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix II to this chapter during the active life and the postclosure care period based on

the availability of ground water. If there is not adequate ground water flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency must be evaluated on a site-specific basis. The demonstration must be supported by:

(1) Information documenting the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone; and

(c) Ground water flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a time frame that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator shall obtain approval by the department for an alternative ground water sampling and analysis frequency. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency in the annual ground water monitoring and corrective action report required by this section.

d. After obtaining the results from the initial and subsequent sampling events required in subdivision b, the owner or operator must:

(1) Within ninety days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells in the monitoring system, conduct analyses for all parameters in appendices I and II to this chapter that are detected in response to subdivision b, and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with subdivision e of subsection 3, and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well;

(2) Establish ground water protection standards for all constituents detected pursuant to subdivision b or d. The ground water protection standards must be established in accordance with subdivision h of this subsection; and

(3) Include the recorded concentrations required by the assessment monitoring program, identify the background concentrations established under the detection monitoring program, and identify the ground water protection standards in the annual ground water monitoring and corrective action report.

e. If the concentrations of all constituents listed in appendices I and II to this chapter are shown to be at or below background values, using the statistical procedures in subdivision g of subsection 3, for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit with approval by the department. The owner or operator shall prepare a notification stating that detection monitoring is resuming for the CCR unit. The owner or operator has completed the notification when the notification is submitted to the department and placed in the facility's operating record.

f. If the concentrations of any constituent in appendices I and II to this chapter are above background values, but all concentrations are below the established ground water

protection standard, using the statistical procedures in subdivision g or subsection 3, the owner or operator must continue assessment monitoring in accordance with this section.

g. If one or more constituents in appendix II to this chapter are detected at statistically significant levels above the established ground water protection standard in any sampling event, the owner or operator shall prepare a notification identifying the constituents in appendix II to this chapter that have exceeded the ground water protection standard. The owner or operator has completed the notification when the notification is submitted to the department and placed in the facility's operating record. The owner or operator of the CCR unit also shall:

(1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization must be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to subsection 6. Characterization of the release includes the following minimum measures:

(a) Install additional monitoring wells necessary to define the contaminant plume or plumes;

(b) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix II to this chapter and the levels at which they are present in the material released;

(c) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph 1 of subdivision d; and

(d) Sample all wells in accordance with paragraph 1 of subdivision d to characterize the nature and extent of the release.

(2) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated offsite. The owner or operator has completed the notifications when they are placed in the facility's operating record.

(3) Within ninety days of finding that any of the constituents listed in appendix II to this chapter have been detected at a statistically significant level exceeding the ground water protection standards the owner or operator must either:

(a) Initiate an assessment of corrective measures as required by subsection 6; or

(b) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. Any such demonstration must be supported by a report that includes the factual or evidentiary basis for any conclusions and must be approved by the department. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to this subsection and may return to detection monitoring if the constituents in appendices I and II to this chapter are at or below the established background. The owner or operator also shall include the demonstration in the annual ground water monitoring and corrective action report.

(4) If a successful demonstration has not been made at the end of the ninety-day period provided by subparagraph b of paragraph 3, the owner or operator of the CCR unit shall initiate the assessment of corrective measures requirements under subsection 6.

(5) If an assessment of corrective measures is required and if the CCR unit is an existing unlined CCR surface impoundment, then the CCR unit is subject to the closure requirements under subdivision a of subsection 2 of section 33.1- 20-08-07 to retrofit or close. In addition, the owner or operator shall prepare a notification stating that an assessment of corrective measures has been initiated.

h. The ground water protection standard for each constituent in appendix II to this chapter detected in the ground water must be:

(1) The maximum contaminant level for constituents for which an maximum contaminant level has been established under chapter 33.1-17-01; or

(2) For the following constituents:

(a) Cobalt - 6 micrograms per liter (ug/ l);

(b) Lead - 15 ug/l;

(c) Lithium - 40 ug/l; and

(d) Molybdenum - 100 ug/l.; or

(3) The background concentration for constituents for which the background level is higher than the maximum contaminant level or the levels identified in paragraph 2 of this subdivision.

6. Assessment of corrective measures.

a. Within ninety days of finding that any constituent listed in appendix II to this chapter has been detected at a statistically significant level exceeding the ground water protection standard, or immediately upon detection of a release from a CCR unit, the owner or operator shall initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected areas to original conditions. The assessment of corrective measures must be completed within ninety days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstance and obtains approval by the department. The ninety-day deadline to complete the assessment of corrective measures may be extended for no longer than sixty days. The owner or operator also shall include the demonstration and approval in the annual ground water monitoring and corrective action report.

b. The owner or operator of the CCR unit shall continue to monitor ground water in accordance with the assessment monitoring program.

c. The assessment of corrective measures must include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subsection 7, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The institutional requirements, such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy.

d. The assessment has been completed when it is approved by the department and placed in the facility's operating record.

e. The owner or operator shall discuss the results of the corrective measures assessment at least thirty days prior to the selection of remedy, in a public meeting with interested and affected parties.

7. Selection of remedy.

a. Based on the results of the corrective measures assessment, the owner or operator shall, as soon as feasible, select a remedy. This requirement applies to, not in place of, any applicable standards under the Occupational Safety and Health Act of 1970 [Public Law 91-596; 84 Stat. 1590]. The owner or operator shall prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator shall prepare a final report describing the selected remedy and how it meets the standards specified in this subsection. The report has been completed when it is approved by the department and placed in the operating record.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground water protection standard as specified pursuant to subdivision h of subsection 5, or attain a risk-based ground water concentration that is protective of human health and the environment;

(3) Control the sources of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix II to this chapter into the environment;

(4) Remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible, taking into account factors such as avoiding inappropriate disturbance of sensitive ecosystems;

(5) Comply with standards for management of wastes as specified in subdivision d of subsection 8.

c. In selecting a remedy that meets the standards of this subsection, the owner or operator of the CCR unit shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedies, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(a) Magnitude of reduction of existing risks;

(b) Magnitude of residual risks in terms of likelihood of further releases due to CCR remaining following implementation of a remedy;

(c) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(d) Short-term risks that might be posed to the community or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal of contaminant;

(e) Time until full protection is achieved;

(f) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(g) Long-term reliability of the engineering and institutional controls; and

(h) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(a) The extent to which containment practices will reduce further releases; and

(b) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:

(a) Degree of difficulty associated with constructing the technology;

(b) Expected operational reliability of the technologies;

(c) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(d) Availability of necessary equipment and specialists; and

(e) Available capacity and location of needed treatment, storage, and disposal services.

(4) The degree to which community concerns are addressed by a potential remedy.

d. The owner or operator shall specify as part of the selected remedy a schedule for implementing and completing remedial activities. Such a schedule must require the completion of remedial activities within a reasonable period of time, taking into consideration:

(1) Extent and nature of contamination;

(2) Reasonable probabilities of remedial technologies in achieving compliance with ground water protection standards and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for CCR managed during implementation of the remedy;

(4) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(5) Resource value of the aquifer, including:

(a) Current and future uses;

(b) Proximity and withdrawal rate of users;

(c) Ground water quantity and quality;

(d) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to CCR constituents;

(e) The hydrogeologic characteristic of the facility and surrounding land; and

(f) The availability of alternative water supplies; and

(6) Other relevant factors.

e. The department may determine that remediation of a release of a constituent listed in appendix II to this chapter from a CCR unit is not necessary if the owner or operator demonstrates to the satisfaction of the department that:

(1) The ground water is additionally contaminated by substances that have originated from a source other than a CCR unit and those substances are present in concentrations such that cleanup of the release from the CCR unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent is present in ground water that:

(a) Is not currently or reasonably expected to be a source of drinking water; and

(b) Is not hydraulically connected with waters to which the constituent is migrating or are likely to migrate in a concentration that would exceed the ground water protection standards; or

(3) Remediation of the release is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

f. A determination by the department that remediation of a release is not necessary may not affect the requirement under subdivision b for the owner or operator to undertake source control measures or other measures, including closure if triggered, that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate the ground water to concentrations that are technically feasible and significantly reduce threats to human health or the environment.

8. Implementation of the corrective action program.

a. Within ninety days of selecting a remedy under subsection 7, the owner or operator shall initiate remedial activities. Based on the schedule established under subdivision d of subsection 7, for implementation and completion of remedial activities the owner or operator shall:

(1) Establish and implement a corrective action ground water monitoring program that:

(a) Meets the requirements of an assessment monitoring program under subsection 5;

(b) Documents the effectiveness of the corrective action remedy; and

(c) Demonstrates compliance with the ground water protection standards.

(2) Implement the selected corrective action remedy; and

(3) Take any interim measures necessary to reduce the contaminants leaching from the CCR unit and potential exposures to human or ecological receptors. Interim measures must, to the greatest extent feasible, be consistent with the objectives of, and contribute to the performance of, any remedy that may be required pursuant to subsection 7. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(a) Time required to develop and implement a final remedy;

(b) Actual or potential exposure of nearby populations or environmental receptors to any of the constituents listed in appendix II to this chapter;

(c) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(d) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(e) Weather conditions that may cause any of the constituents listed in appendix II to this chapter to migrate or be released;

(f) Potential for exposure to any of the constituents listed in appendix II to this chapter as a result of an accident or failure of a container or handling system; and

(g) Other situations that may pose threats to human health and the environment.

b. If an owner or operator of the CCR unit, determines, at any time, that compliance with the requirements of subdivision b of subsection 7 is not being achieved through the remedy selected, the owner or operator shall implement other methods or techniques that could feasibly achieve compliance with the requirements.

c. Remedies selected pursuant to subsection 7 must be considered complete when:

(1) The owner or operator of the CCR unit demonstrates that compliance with the ground water protection standards has been achieved at all points within the plume of contamination that lie beyond the ground water monitoring well system established under subsection 2;

(2) Except as provided by paragraph 4, compliance with the ground water protection standards has been achieved by demonstrating that concentrations of constituents listed in appendix II to this chapter have not exceeded the ground water protection standards for a period of three consecutive years using the statistical procedures and performance standards in subdivisions f and g of subsection 3; and

(3) All actions required to complete the remedy have been satisfied.

(4) The department may specify an alternative length of time to that specified in paragraph 2 during which the owner or operator must demonstrate that concentrations of constituents listed in appendix II to this chapter have not exceeded the ground water protection standards taking into consideration:

(a) Extent and concentration of the release;

(b) Behavior characteristics of the constituents in the ground water;

(c) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(d) Characteristics of the ground water.

d. All CCR that are managed pursuant to a remedy required under subsection 7, or an interim measure required under paragraph 3 of subdivision a, shall be managed in a manner that complies with all applicable requirements under this article and North Dakota Century Code chapter 23.1-08.

e. Upon completion of the remedy, the owner or operator shall prepare a notification stating that the remedy has been completed. The owner or operator shall obtain a certification from a qualified professional engineer or a qualified environmental professional that the remedy has been completed. The report has been completed when it is approved by the department and placed in the operating record.

9. Corrective action procedures to remedy eligible nonground water releases.

a. General. This subsection specifies the corrective action requirements that apply to nonground water releases from CCR units that can be completely remediated within one hundred eighty days from the detection of the release. A release is completely remediated when a qualified professional engineer or a qualified environmental professional completes the certification required in paragraph 3 of subdivision c and the corrective action report is approved by the department. If the owner or operator determines, at any time, that the release will not be completely remediated within this one hundred eighty-day time frame, the owner or operator shall comply with all additional requirements specified in subsections 6, 7, and 8.

b. Corrective action requirements. Upon detection of a nonground water release from a CCR unit, the owner or operator shall comply with all of the following requirements:

(1) Immediately take all necessary measures to control all sources of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment;

(2) Determine the corrective measures that will meet the substantive standards in subdivision a of subsection 6 to prevent further releases, to remediate any releases, and to restore the affected area to original conditions;

(3) Analyze the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described in subdivision c of subsection 6;

(4) Select the corrective action that will remedy the nonground water release, taking into account the results of the assessment in this subdivision and the factors specified in subdivision c of subsection 7;

(5) Remediate the nonground water release to meet the standards specified in subdivision b of subsection 7; and

(6) Complete the remedy within one hundred eighty days of the date of discovery of the release.

c. Required notices and reports. An owner or operator of a CCR unit that complies with the requirements of this subsection to remediate a nonground water release shall ensure that

the notices and reports specified in this subdivision are completed. All required notices and reports must be signed by the owner or operator.

- (1) Within fifteen days of discovering a nonground water release, the owner or operator shall prepare a notification of discovery of a nonground water release. The owner or operator has completed the notification when it has been placed in the facility's operating record and submitted to the department.
- (2) Within fifteen days of completing the analysis of the effectiveness of potential corrective measures, place the completed analysis in the facility's operating record and submit to the department.
- (3) Within thirty days of completion of a corrective action of a nonground water release, the owner or operator shall prepare a report documenting the completion of the corrective action. The report must describe the nature and extent of the nonground water release, the CCR units responsible for the nonground water release, and how the remedy selected achieves the corrective action requirements specified in this subsection. The notification must include a certification by a qualified professional engineer or a qualified environmental professional that the corrective action has been completed. The owner or operator has completed the report when it has been approved by the department and placed in the facility's operating record.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-07. Closure and postclosure care.

1. Inactive CCR surface impoundments.

- a. Inactive CCR surface impoundments are subject to all of the requirements of this chapter applicable to existing CCR surface impoundments.
- b. The owner or operator of an inactive CCR surface impoundment shall include documentation of the requirements of this subdivision with the permit modification application required by subsection 9 of section 33.1-20-08-02.

(1) Recordkeeping, notification, and internet requirements.

- (a) The owner or operator must have prepared and placed a notification of intent to initiate closure of the inactive CCR surface impoundment in the facility's operating record;
- (b) The owner or operator must have provided notification of the intent to initiate closure of the inactive CCR surface impoundment to the department; and
- (c) The owner or operator must have placed the notification of intent to initiate closure of the inactive CCR surface impoundment on its CCR website.

(2) Location restrictions.

(a) The owner or operator of the inactive CCR surface impoundment shall:

- [1] Complete the demonstration for placement above the uppermost aquifer as set forth by subsection 1 of section 33.1-20-08-03;
- [2] Complete the demonstration for wetlands as set forth by subsection 2 of section 33.1-20-08-03;

[3] Complete the demonstration for fault areas as set forth by subsection 3 of section 33.1-20-08-03;

[4] Complete the demonstration for seismic impact zones as set forth by subsection 4 of section 33.1-20-08-03;

[5] Complete the demonstration for unstable areas as set forth by subsection 5 of section 33.1-20-08-03.

(b) An owner or operator of an inactive CCR surface impoundment who fails to demonstrate compliance with the requirements of subparagraph a is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2.

(3) Design criteria. The owner or operator of the inactive CCR surface impoundment shall:

(a) Complete the documentation of liner type as set forth by subdivision a of subsection 2 of section 33.1-20-08-04.

(b) Place on or immediately adjacent to the CCR unit the permanent identification marker as set forth by paragraph 1 of subdivision a of subsection 3 of section 33.1-20-08-04.

(c) Prepare and maintain an emergency action plan as set forth by paragraph 3 of subdivision a of subsection 3 of section 33.1-20-08-04.

(d) Compile information relating to construction as set forth by subdivision c of subsection 3 of section 33.1-20-08-04.

(e) Complete the initial hazard potential classification, structural stability, and safety factor assessments as set forth by paragraph 2 of subdivision a and subdivisions d and e of subsection 3 of section 33.1-20-08-04.

(4) Operating criteria. The owner or operator of the inactive CCR surface impoundment shall:

(a) Prepare the initial CCR fugitive dust control plan as set forth in subsection 1 of section 33.1-20-08-05.

(b) Prepare the initial inflow design flood control system plan as set forth in subsection 3 of section 33.1-20-08-05.

(c) Initiate the inspections by a qualified person as set forth by subsection 4 of section 33.1-20-08-05.

(d) Complete the initial annual inspection by a qualified professional engineer set forth in subsection 4 of section 33.1-20-08-05.

(5) Ground water monitoring and corrective action. The owner or operator of the inactive CCR surface impoundment shall:

(a) Comply with ground water monitoring requirements set forth in subdivision b of subsection 1 of section 33.1-20-08-06 and subdivision b of subsection 4 of section 33.1-20-08-06; and

(b) Prepare the initial ground water monitoring and corrective action report as set forth in subdivision e of subsection 1 of section 33.1-20-08-06.

(6) Closure and postclosure care. The owner or operator of the inactive CCR surface impoundment shall:

(a) Prepare an initial written closure plan as set forth in subdivision b of subsection 3; and

(b) Prepare an initial written postclosure care plan as set forth in subdivision d of subsection 5.

2. Closure or retrofit of CCR units.

a. The owner or operator of an existing unlined CCR surface impoundment, as determined under subdivision a of subsection 2 of section 33.1-20-08-04, is subject to the requirements of paragraph 1.

(1) Except as provided by paragraph 3, an owner or operator of an existing unlined CCR surface impoundment shall cease placing CCR and non-CCR waste streams into the unlined CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of subsection 3.

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with paragraph 1 shall include a statement in the notification required under subdivision g of subsection 3 or paragraph 5 of subdivision j of subsection 3, that the CCR surface impoundment is closing or retrofitting under the requirements of paragraph 1.

(3) The time frame specified in paragraph 1 does not apply if the owner or operator complies with the alternative closure procedures specified in subsection 4.

(4) At any time after the initiation of closure under paragraph 1, the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of subdivision j of subsection 3.

b. The owner or operator of an existing CCR surface impoundment is subject to the requirements of paragraph 1.

(1) Noncompliance with location standards.

(a) Placement above the uppermost aquifer. Except as provided by paragraph 4, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in subsection 1 of section 33.1-20-08-03, shall cease placing CCR and non-CCR waste streams into such CCR unit no later than October 31, 2020, and close the CCR unit in accordance with the requirements of subsection 3.

(b) Wetlands, fault areas, seismic impact zones and unstable areas. Except as provided by paragraph 4, within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in subsections 2 through 5 of section 33.1-20-08-03, the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR waste streams into such CCR unit and close the CCR unit in accordance with the requirements of subsection 3.

(2) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by subdivision e of subsection 3 of section 33.1-20-08-04 by the deadlines specified in subdivision f of subsection 3 of section 33.1-20-08-04 or failing to document that the calculated factors of safety for the

existing CCR surface impoundment achieve the minimum safety factors specified in subdivision e of subsection 3 of section 33.1-20-08-04, the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR waste streams into such CCR unit and close the CCR unit in accordance with the requirements of subsection 3.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with paragraphs 1 or 2 shall include a statement in the closure notification required under subdivision g of subsection 3 that the CCR surface impoundment is closing under the requirements.

(4) The time frame specified in paragraph 1 does not apply if the owner or operator complies with the alternative closure procedures specified in subsection 4.

c. The owner or operator of a new CCR surface impoundment is subject to the requirements of paragraph 1.

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by subdivision e of subsection 3 of section 33.1-20-08-04 by the deadlines specified in subdivision f of subsection 3 of section 33.1-20-08-04 or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in subdivision e of subsection 3 of section 33.1-20-08-04, the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR waste streams into such CCR unit and close the CCR unit in accordance with the requirements of subsection 3.

(2) An owner or operator of a new CCR surface impoundment that closes in accordance with paragraph 1 shall include a statement in the closure notification required under subdivision g of subsection 3 that the CCR surface impoundment is closing under the requirements of this subdivision.

d. The owner or operator of an existing CCR landfill is subject to the requirements of paragraph 1.

(1) Except as provided by paragraph 3, within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in subsection 5 of section 33.1-20-08-03, the owner or operator of the CCR unit must cease placing CCR and non-CCR waste streams into that landfill and close the CCR unit in accordance with the requirements of subsection 3.

(2) An owner or operator of an existing CCR landfill that closes in accordance with paragraph 1 shall include a statement in the closure notification required under subdivision g of subsection 3 of this section that the CCR landfill is closing under the requirements of this subdivision.

(3) The time frame specified in paragraph 1 does not apply if the owner or operator complies with the alternative closure procedures specified in subsection 4.

3. Criteria for conducting the closure or retrofit of CCR units.

a. Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in subdivisions b through i. Retrofit of a CCR surface impoundment must be completed in accordance with the requirements in subdivision j.

b. Written closure plan.

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and generally accepted good engineering practices. The written closure plan must include:

- (a) A narrative description of how the CCR unit will be closed in accordance with this subsection.
- (b) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with subdivision c.
- (c) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system and the methods and procedures to be used to install the final cover. The closure plan must also discuss how the final cover system will achieve the performance standards specified in subdivision d.
- (d) An estimate of the maximum inventory of CCR ever onsite over the active life of the CCR unit.
- (e) An estimate of the largest area of the CCR unit ever requiring a final cover at any time during the CCR unit's active life.
- (f) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones, such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated time frames to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the time frames specified in paragraph 1 of subdivision f of this subsection, the written closure plan must include the site-specific information, factors and considerations that would support any time extension sought under paragraph 2 of subdivision f.

(2) Time frames for preparing the initial written closure plan.

- (a) Existing CCR units. The owner or operator of the CCR unit shall include the initial written closure plan consistent with the requirements specified in paragraph 1 with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.
- (b) New CCR units and any lateral expansion of a CCR unit. The owner or operator shall include an initial written closure plan consistent with the requirements specified in paragraph 1 with the application for a new permit or permit modification.
- (c) The owner or operator has completed the written closure plan when the plan, including the certification required by paragraph 4, has been approved by the department and placed in the facility's operating record.

(3) Amendment of a written closure plan.

(a) The owner or operator may amend the initial or any subsequent written closure plan at any time with approval by the department.

(b) The owner or operator shall amend the written closure plan whenever:

[1] There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

[2] Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan.

(c) The owner or operator shall amend the closure plan at least sixty days prior to a planned change in the operation of the facility or CCR unit, or no later than sixty days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator shall amend the current closure plan no later than thirty days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written closure plan meets the requirements of this subsection.

c. Closure by removal of CCR. An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. Coal combustion residuals removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and ground water monitoring concentrations do not exceed the established ground water protection standards for constituents listed in appendix II to this chapter.

d. Closure performance standard when leaving CCR in place.

(1) The owner or operator of a CCR unit shall ensure that, at a minimum, the CCR unit is closed in a manner that will:

(a) Control, minimize, or eliminate, to the maximum extent feasible, postclosure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(b) Preclude the probability of future impoundment of water, sediment, or slurry;

(c) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and postclosure care period;

(d) Minimize the need for further maintenance of the CCR unit; and

(e) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) Drainage and stabilization of CCR surface impoundments. Prior to installing the final cover system, the owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall:

(a) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues.

(b) Stabilize remaining wastes sufficiently to support the final cover system.

(3) Final cover system. If a CCR unit is closed by leaving CCR in place, the owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of subparagraph a, or the requirements of the alternative final cover system specified in subparagraph b. The design of the final cover system must be included in the written closure plan.

(a) The final cover system must be designed and constructed to meet these criteria:

[1] The infiltration of liquids through the closed CCR unit must be minimized by the use of an infiltration layer that contains a minimum of eighteen inches [45.7 centimeters] of earthen material. The saturated hydraulic conductivity of the infiltration layer must be no greater than 1×10^{-7} centimeters per second.

[2] A second layer of twelve inches [30.5 centimeters] or more of clay-rich soil material suitable for serving as a plant root zone must be placed over the compacted layer. This layer is not required if the CCR unit contains only bottom ash.

[3] The erosion of the final cover system must be minimized by the use of an erosion layer that contains a minimum of six inches [15.2 centimeters] of suitable plant growth material over the covered CCR unit and the facility planted with adapted grasses. The total depth of final cover must be three feet [91.4 centimeters] or more unless the CCR unit contains only bottom ash, in which case the total depth of final cover must be two feet [61.0 centimeters] or more.

[4] The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(b) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet these criteria:

[1] The design of the final cover system must include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in items 1 and 2 of subparagraph a or an average long-term percolation rate less than 0.2 inches [5.0 millimeters] per year.

[2] The design of the final cover system must include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in item 3 of subparagraph a.

[3] The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(c) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the design of the final cover system meets the requirements of this section.

(4) Use of CCR in design and construction of final cover system.

(a) This paragraph specifies the allowable uses of CCR in the closure of CCR units closing pursuant to subsection 2. Coal combustion residuals may be

placed in such units with approval by the department, but only for the purposes of grading and contouring in the design and construction of the final cover system.

(b) The owner or operator of a CCR unit shall meet all of the following criteria when placing CCR within a CCR unit for the purposes of grading or contouring:

[1] The CCR placed for construction of the final cover system must have been generated at the facility and be located at the facility at the time closure was initiated;

[2] For incised CCR surface impoundments the CCR must be placed entirely above the highest elevation of the surrounding natural ground surface where the CCR surface impoundment was constructed;

[3] For all other CCR units, CCR must be placed entirely above the highest elevation of CCR in the unit, following dewatering and stabilization;

[4] The CCR must not be placed outside the plane extending vertically from the line formed by the intersection of the crest of the CCR surface impoundment and the upstream slope of the CCR surface impoundment; and

[5] The final cover system must be constructed with either:

[a] A slope not steeper than five percent grade after allowance for settlement; or

[b] At a steeper grade, if the department determines that the steeper slope is necessary based on conditions at the site, to facilitate runoff and minimize erosion, and that side slopes are evaluated for erosion potential based on a stability analysis to evaluate possible erosion potential. The stability analysis, at a minimum, must evaluate the site geology; characterize soil shear strength; construct a slope stability model; establish ground water and seepage conditions, if any; select loading conditions; locate critical failure surface; and iterate until minimum factor of safety is achieved.

e. Initiation of closure activities. Except as provided for in paragraph 5 and subsection 4, the owner or operator of a CCR unit must commence closure of the CCR unit no later than the applicable time frames specified in either paragraph 1, 2, or 3.

(1) The owner or operator shall commence closure of the CCR unit no later than thirty days after the date on which the CCR unit either:

(a) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(b) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2) Except as provided by paragraph 3, the owner or operator shall commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(3) Notwithstanding paragraph 2, the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation to the department that the CCR unit will continue to accept wastes or will start removing CCR for beneficial use. The documentation must be supported by, at a minimum, the information specified in subparagraphs a and b. The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for beneficial use. The owner or operator shall submit each completed demonstration to the department and place it in the facility's operating record prior to the end of any two-year period.

(a) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(b) Information demonstrating that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative must include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in items 1 through 4 are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

[1] Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

[2] The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled (e.g., CCR is not being generated) and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

[3] The CCR unit is dedicated to an operating coal-fired boiler (i.e., CCR is being generated); however, no CCR is being placed in the CCR unit because the CCR is being entirely diverted to beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

[4] The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(c) In order to obtain additional time extensions to initiate closure of a CCR unit beyond the first two years provided by paragraph 2, the owner or operator of the CCR unit shall include with the demonstration required by this subdivision the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted

information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(4) For purposes of this chapter, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(a) Taken any steps necessary to implement the written closure plan required by paragraph b;

(b) Submitted a completed application for any required state or agency permit or permit modification; or

(c) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(5) The time frames specified in paragraphs 1 and 2 do not apply to any owners or operators of CCR units under closure as required by subdivisions a through d of subsection 2.

f. Completion of closure activities.

(1) Except as provided for in paragraphs 2 and 3, the owner or operator shall complete closure of the CCR unit:

(a) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(b) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2) Extensions of closure time frames. With approval by the department, the time frames for completing closure of a CCR unit specified under paragraph 1 may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required time frames due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by subdivision b, the demonstration must include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record prior to the end of any two-year period. Factors that may support such a demonstration include:

(a) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(b) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(c) The geology and terrain surrounding the CCR unit will affect the amount of material needed to close the CCR unit; or

(d) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

(3) Maximum time extensions.

(a) CCR surface impoundments of forty acres [16.2 hectares] or smaller may extend the time to complete closure by no longer than two years.

(b) CCR surface impoundments larger than forty acres [16.2 hectares] may extend the time frame to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(c) CCR landfills may extend the time frame to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(4) In order to obtain additional time extensions to complete closure of a CCR unit beyond the times provided by paragraph 1, the owner or operator of the CCR unit shall include with the demonstration required by paragraph 2 the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(5) Upon completion, the owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer verifying that closure has been completed in accordance with the closure plan specified in subdivision b and the requirements of this subsection.

g. Before starting closure of a CCR unit, the owner or operator shall prepare a notification of intent to close a CCR unit. The notification must include the certification by a qualified professional engineer for the design of the final cover system as required by subparagraph c of paragraph 3 of subdivision d, if applicable. The owner or operator has completed the notification when it has been submitted to the department and placed in the facility's operating record.

h. Within thirty days of completion of closure of the CCR unit, the owner or operator shall prepare a notification of closure of a CCR unit. The notification must include the certification by a qualified professional engineer required by paragraph 5 of subdivision f. The owner or operator has completed the notification when it has been submitted to the department and placed in the facility's operating record.

i. Deed notations.

(1) Except as provided by paragraph 4, following closure of a CCR unit, the owner or operator shall record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(a) The land has been used as a CCR unit; and

(b) Its use is restricted under the postclosure care requirements as provided by subparagraph c of paragraph 1 of subdivision d of subsection 5.

(3) Within sixty days of recording a notation on the deed to the property, the owner or operator shall submit a notification to the department stating that the deed notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record.

(4) An owner or operator that closes a CCR unit by removal of all CCR materials in accordance with subdivision c is not subject to the requirements of paragraphs 1 through 3.

j. Criteria to retrofit an existing CCR surface impoundment.

(1) To retrofit an existing CCR surface impoundment, the owner or operator must:

(a) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and

(b) Comply with the requirements in subdivision b of subsection 2 of section 33.1-20-08-04.

(c) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of this chapter, including the requirement to conduct any necessary corrective action.

(2) Written retrofit plan.

(a) Content of the plan. The owner or operator shall prepare a written retrofit plan for approval by the department that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan must include:

[1] A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with this section.

[2] A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.

[3] An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.

[4] An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.

[5] A schedule for completing all activities necessary to satisfy the retrofit criteria in this section, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(b) time frames for preparing the initial written retrofit plan.

[1] No later than sixty days prior to the date of initiating retrofit activities, the owner or operator shall prepare the initial written retrofit plan. For purposes of this chapter, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

[a] Taken any steps necessary to implement the written retrofit plan;

[b] Submitted a completed application for a permit or permit modification; or

[c] Taken any steps necessary to comply with any state standards that are a prerequisite, or are otherwise applicable, to initiating or completing the retrofit of a CCR unit.

[2] The owner or operator has completed the written retrofit plan when the plan, including the certification required by subparagraph d, has been approved by the department and placed in the facility's operating record.

(c) Amendment of a written retrofit plan.

[1] The owner or operator may amend the initial or any subsequent written retrofit plan at any time with approval by the department.

[2] The owner or operator shall amend the written retrofit plan whenever:

[a] There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or

[b] Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

[3] The owner or operator shall amend the retrofit plan at least sixty days prior to a planned change in the operation of the facility or CCR unit, or no later than sixty days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator shall amend the current retrofit plan no later than thirty days following the triggering event.

(d) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of this section.

(3) Deadline for completion of activities related to the retrofit of a CCR unit. Any CCR surface impoundment that is being retrofitted must complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in subdivision f or, where applicable, subsection 4.

(4) Upon completion, the owner or operator shall obtain a certification from a qualified professional engineer verifying that the retrofit activities have been completed in accordance with the retrofit plan.

(5) Before initiating the retrofit of a CCR unit, the owner or operator shall prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been submitted to the department and placed in the facility's operating record.

(6) Within thirty days of completing the retrofit activities the owner or operator shall prepare a notification of completion of retrofit activities. The notification must include the certification by a qualified professional engineer as required by paragraph 4.

The owner or operator has completed the notification when it has been submitted to the department and placed in the facility's operating record.

(7) At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of this subsection.

4. Alternative closure requirements. The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to subdivisions a, b, or d of subsection 2 may continue to receive CCR or non-CCR waste streams in the unit provided the owner or operator meets the requirements of either subdivision a, b, or c and receives approval by the department.

a. No alternative CCR disposal capacity.

(1) Notwithstanding the provisions of subdivisions a, b, or d of subsection 2, a CCR unit may continue to receive CCR if the owner or operator of the CCR unit certifies that the CCR shall continue to be managed in that CCR unit due to the absence of alternative disposal capacity both onsite and offsite of the facility. To qualify under this paragraph, the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(a) No alternative disposal capacity is available onsite or offsite. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(b) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator shall arrange to use such capacity as soon as feasible;

(c) The owner or operator shall remain in compliance with all other requirements of this chapter, including the requirement to conduct any necessary corrective action; and

(d) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR unit must cease receiving CCR and initiate closure following the time frames in subdivisions e and f of subsection 3.

(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit must cease receiving CCR and close in accordance with the time frames in subdivisions e and f of subsection 3.

b. No alternative capacity for non-CCR waste streams.

(1) Notwithstanding the provisions of subdivisions a, b, or d of subsection 2, a CCR unit may continue to receive non-CCR waste streams if the owner or operator of the CCR unit certifies that the waste streams must continue to be managed in that CCR unit due to the absence of alternative capacity both onsite and offsite the facility. For these non-CCR waste streams, capacity means the capacity of impoundments, tanks, and other conveyances to manage daily flows currently handled by the unit. To qualify under this paragraph, the owner or operator of the CCR unit shall document that all of the following conditions have been met for each non-CCR waste stream that will continue to be received by the CCR unit:

(a) No alternative disposal capacity is available. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;

(b) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection requires that efforts to obtain additional capacity were made at the earliest date that an owner or operator knew, or had reason to know, that such a unit may become subject to closure under subdivisions a, b, or d of subsection 2. Qualification under this subsection lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator shall arrange to use such capacity as soon as feasible;

(c) The owner or operator shall remain in compliance with all other requirements of this chapter, including the requirement to conduct any necessary corrective action; and

(d) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative capacity for the given waste stream.

(2) Once alternative capacity is available for a given waste stream, the CCR unit must cease receiving that waste stream, and in the case that alternate capacity has been found for all waste streams, the facility shall initiate closure of the CCR unit following the time frames in subdivisions e and f of subsection 3.

(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit must cease receiving all waste streams and close in accordance with the time frames in subdivisions e and f of subsection 3.

c. Permanent cessation of a coal-fired boiler by a date certain.

(1) Notwithstanding the provisions of subdivisions a, b, or d of subsection 2, a CCR unit may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the time frames specified in paragraphs 2 through 4, but in the interim period, prior to closure of the coal-fired boiler, the facility must continue to use the CCR unit due to the absence of alternative disposal capacity both onsite and offsite of the facility. For wastewaters capacity means the capacity of impoundments, tanks, and other units to manage daily flows currently handled by the unit closing. To qualify under this paragraph, the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(a) No alternative disposal capacity is available onsite or offsite. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.

(b) The owner or operator shall remain in compliance with all other requirements of this chapter, including the requirement to conduct any necessary corrective action; and

(c) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

- (2) For a CCR surface impoundment that is forty acres [16.2 hectares] or smaller, the coal-fired boiler must cease operation and the CCR surface impoundment must have completed closure no later than October 17, 2023.
- (3) For a CCR surface impoundment that is larger than forty acres [16.2 hectares], the coal-fired boiler must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028.
- (4) For a CCR landfill, the coal-fired boiler must cease operation, and the CCR landfill must complete closure no later than April 19, 2021.

d. Required notices and progress reports. An owner or operator of a CCR unit that closes in accordance with subparagraphs a, b, or c must complete the following notices and progress reports and submit them to the department:

- (1) Within six months of becoming subject to closure pursuant to subdivisions a, b, or d of subsection 2, the owner or operator shall prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of this subsection. The notification must describe why the CCR unit qualifies for the alternative closure provisions, in addition to providing the documentation and certifications required by subdivisions a, b, or c.
- (2) The owner or operator shall prepare the periodic progress reports in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports must be completed according to the following schedule:
 - (a) The first annual progress report must be prepared no later than thirteen months after completing the notification of intent to comply with the alternative closure requirements.
 - (b) The second annual progress report must be prepared no later than twelve months after completing the first annual progress report. Additional annual progress reports must be prepared within twelve months of completing the previous annual progress report.
 - (c) The owner or operator has completed the progress reports specified in this paragraph when the reports are placed in the facility's operating record.
- (3) An owner or operator of a CCR unit also shall prepare the notification of intent to close a CCR unit as required by subdivision g of subsection 3.

5. Postclosure care requirements.

a. Applicability.

- (1) Except as provided by paragraph 2, this subsection applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under subsection 3.
- (2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by subdivision c of subsection 3 is not subject to the postclosure care criteria under this subsection.

b. Postclosure care maintenance requirements. Following closure of the CCR unit, the owner or operator shall conduct postclosure care for the CCR unit, which must consist of at least the following:

- (1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;
- (2) If the CCR unit is subject to the design criteria under subsection 1 of section 33.1-20-08-04, maintaining the integrity and effectiveness of the leachate collection and removal system and operating the leachate collection and removal system; and
- (3) Maintaining the ground water monitoring system and monitoring the ground water in accordance with the requirements of section 33.1-20-08-06.

c. Postclosure care period.

- (1) Except as provided by paragraphs 2 and 3, the owner or operator of the CCR unit shall conduct postclosure care for thirty years.
- (2) If at the end of the postclosure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with subsection 5 of section 33.1-20-08-06, the owner or operator shall continue to conduct postclosure care until the owner or operator returns to detection monitoring in accordance with subdivision e of subsection 5 of section 33.1-20-08-06 or subparagraph b of paragraph 3 of subdivision g of subsection 5 of section 33.1-20-08-06.
- (3) The department may establish an alternate postclosure period upon a determination that the alternate period is sufficient to protect human health and the environment.
 - (a) To reduce the postclosure care period, the department must ensure that the postclosure care period is long enough to establish settlement behavior and to detect to wear-in defects in the cover system. At a minimum, the department must consider the type of cover placed on the unit (e.g., geosynthetic clay liner) and the placement of the ground water monitoring wells with respect to the waste management units and the ground water table.
 - (b) A determination that a reduced postclosure care period is warranted does not affect the obligation to comply with subdivision b.

d. Written postclosure plan.

- (1) Content of the plan. The owner or operator of a CCR unit shall prepare a written postclosure plan that includes:
 - (a) A description of the monitoring and maintenance activities required in subdivision b for the CCR unit, and the frequency at which these activities will be performed;
 - (b) The name, address, telephone number, and email address of the person or office to contact about the facility during the postclosure care period; and
 - (c) A description of the planned uses of the property during the postclosure period. Postclosure use of the property may not disturb the integrity of the final cover, liner, or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this chapter. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration must

be certified by a qualified professional engineer, and notification must be provided to the department that the demonstration has been placed in the operating record and on the owner's or operator's publicly accessible internet site.

(2) Deadline to prepare the initial written postclosure plan.

- (a) Existing CCR landfills and existing CCR surface impoundments. The owner or operator of the CCR unit shall include the initial written closure plan consistent with the requirements specified in paragraph 1 with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.
- (b) New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit. The owner or operator shall include an initial written postclosure plan consistent with the requirements specified in paragraph 1 with the application for a new permit or permit modification.
- (c) The owner or operator has completed the written postclosure plan when the plan has been approved by the department and placed in the facility's operating record.

(3) Amendment of a written postclosure plan.

- (a) The owner or operator may amend the initial or any subsequent written postclosure plan developed pursuant to paragraph 1 at any time with approval by the department.
- (b) The owner or operator shall amend the written closure plan whenever:
 - [1] There is a change in the operation of the CCR unit that would substantially affect the written postclosure plan in effect; or
 - [2] After postclosure activities have commenced, unanticipated events necessitate a revision of the written postclosure plan.
- (c) The owner or operator shall amend the written postclosure plan at least sixty days prior to a planned change in the operation of the facility or CCR unit, or no later than sixty days after an unanticipated event requires the need to revise an existing written postclosure plan. If a written postclosure plan is revised after postclosure activities have commenced for a CCR unit, the owner or operator shall amend the written postclosure plan no later than thirty days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written postclosure plan meets the requirements of this subsection.

- e. Notification of completion of postclosure care period. No later than sixty days following the completion of the postclosure care period, the owner or operator of the CCR unit shall prepare a notification verifying that postclosure care has been completed. The notification must include the certification by a qualified professional engineer verifying that postclosure care has been completed in accordance with the closure plan specified in subdivision d and the requirements of this subsection. The owner or operator has completed the notification when it has been approved by the department and placed in the facility's operating record.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-08. Recordkeeping, notification, and posting of information to the internet.

1. Recordkeeping requirements.

- a. Each owner or operator of a CCR unit subject to the requirements of this chapter shall maintain files of all information required by this section in a written operating record at their facility.
- b. Unless specified otherwise, each file must be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.
- c. An owner or operator of more than one CCR unit subject to the provisions of this chapter may comply with the requirements of this section in one recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.
- d. The owner or operator of a CCR unit subject to this chapter shall submit to the department any demonstration or documentation required by this chapter, if requested.
- e. Location standards. The owner or operator of a CCR unit subject to this chapter shall place the demonstrations documenting whether or not the CCR unit is in compliance with the requirements under subsections 1 through 5 of section 33.1- 20-08-03, as they become available, in the facility's operating record.
- f. Design criteria. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:
 - (1) The design and construction certifications as required by subdivisions b and c of subsection 1 of section 33.1-20-08-04.
 - (2) The documentation of liner type as required by paragraph 1 of subdivision a of subsection 2 of section 33.1-20-08-04.
 - (3) The design and construction certifications as required by paragraphs 2 and 3 of subdivision b of subsection 2 of section 33.1-20-08-04.
 - (4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by paragraph 1 of subdivision a of subsection 3 of section 33.1-20-08-04.
 - (5) The initial and periodic hazard potential classification assessments as required by paragraph 2 of subdivision a of subsection 3 of section 33.1-20- 08-04.
 - (6) The emergency action plan, and any amendment of the emergency action plan, as required by paragraph 3 of subdivision a of subsection 3 of section 33.1-20- 08-04, except that only the most recent emergency action plan must be maintained in the facility's operating record and publicly accessible CCR website.
 - (7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR

unit and the local emergency responders as required by item 5 of subparagraph a of paragraph 3 of subdivision a of subsection 3 of section 33.1-20-08-04.

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by subparagraph e of paragraph 3 of subdivision a of subsection 3 of section 33.1-20-08-04.

(9) The history of construction, including design and construction plans, and any revisions of it, as required by subdivision c of subsection 3 of section 33.1-20-08-04, except that these files must be maintained until the CCR unit completes closure of the unit in accordance with subsection 3 of section 33.1-20-08-07.

(10) The initial and periodic structural stability assessments as required by subdivision d of subsection 3 of section 33.1-20-08-04.

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by paragraph 2 of subdivision d of subsection 3 of section 33.1-20-08-04.

(12) The initial and periodic safety factor assessments as required by paragraph 2 of subdivision e of subsection 3 of section 33.1-20-08-04.

g. Operating criteria. The owner or operator of a CCR unit subject to this chapter must place the following information, as it becomes available, in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by subdivision b of subsection 1 of section 33.1-20-08-05, except that only the most recent control plan must be maintained in the facility's operating record and publicly accessible CCR website.

(2) The annual CCR fugitive dust control report required by subdivision c of subsection 1 of section 33.1-20-08-05.

(3) The initial and periodic run-on and run-off control system plans as required by subdivision c of subsection 2 of section 33.1-20-08-05.

(4) The initial and periodic inflow design flood control system plan as required by subdivision c of subsection 3 of section 33.1-20-08-05.

(5) Documentation recording the results of each impoundment inspection and instrumentation monitoring by a qualified person as required by subdivision a of subsection 4 of section 33.1-20-08-05.

(6) The periodic impoundment inspection report as required by paragraph 2 of subdivision b of subsection 4 of section 33.1-20-08-05.

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by paragraph 5 of subdivision b of subsection 4 of section 33.1-20-08-05 and by paragraph 5 of subdivision b of subsection 5 of section 33.1-20-08-05.

(8) Documentation recording the results of the weekly landfill inspection by a qualified person as required by subdivision a of subsection 5 of section 33.1-20-08-05.

(9) The periodic landfill inspection report as required by paragraph 2 of subdivision b of subsection 5 of section 33.1-20-08-05.

h. Ground water monitoring and corrective action. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:

- (1) The annual ground water monitoring and corrective action report as required by subdivision e of subsection 1 of section 33.1-20-08-06.
- (2) Documentation of the design, installation, development, and decommissioning of any monitoring wells; piezometers; and other measurement, sampling, and analytical devices as required by paragraph 1 of subdivision e of subsection 2 of section 33.1-20-08-06.
- (3) The ground water monitoring system certification as required by subdivision f of subsection 2 of section 33.1-20-08-06.
- (4) The selection of a statistical method certification as required by paragraph 6 subdivision f of subsection 3 of section 33.1-20-08-06.
- (5) Within thirty days of establishing an assessment monitoring program, the notification as required by paragraph 3 subdivision e of subsection 4 of section 33.1-20-08-06.
- (6) The results of appendices I and II to this chapter constituent concentrations as required by paragraph 1 subdivision d of subsection 5 of section 33.1-20-08-06.
- (7) Within thirty days of returning to a detection monitoring program, the notification as required by subdivision e of subsection 5 of section 33.1-20-08-06.
- (8) Within thirty days of detecting one or more constituents in appendix II to this chapter at statistically significant levels above the ground water protection standard, the notifications as required by subdivision g of subsection 5 of section 33.1-20-08-06.
- (9) Within thirty days of initiating the assessment of corrective measures requirements, the notification as required by paragraph 5 subdivision g of subsection 5 of section 33.1-20-08-06.
- (10) The completed assessment of corrective measures as required by subdivision d of subsection 6 of section 33.1-20-08-06.
- (11) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by subdivision e of subsection 6 of section 33.1-20-08-06.
- (12) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by subdivision a of subsection 7 of section 33.1-20-08-06, except that the selection of remedy report must be maintained until the remedy has been completed.
- (13) Within thirty days of completing the remedy, the notification as required by subdivision e of subsection 8 of section 33.1-20-08-06.
- (14) The demonstration, including long-term performance data, supporting the suspension of ground water monitoring requirements as required by subdivision f of subsection 1 of section 33.1-20-08-06.
- (15) The notification of discovery of a nonground water release as required by paragraph 1 subdivision c of subsection 9 of section 33.1-20-08-06.

- (16) The report documenting the completion of the corrective action as required by paragraph 2 of subdivision c of subsection 9 of section 33.1-20-08-06.
- i. Closure and postclosure care. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:
- (1) The notification of intent to initiate closure of the CCR unit as required by paragraph 1 of subdivision b of subsection 1 of section 33.1-20-08-07 and subdivision g of subsection 3 of section 33.1-20-08-07.
 - (2) The annual progress reports of closure implementation as required by paragraph 2 of subdivision d of subsection 4 of section 33.1-20-08-07.
 - (3) The notification of closure completion as required by subdivision h of subsection 3 of section 33.1-20-08-07.
 - (4) The written closure plan, and any amendment of the plan, as required by subdivision b of subsection 3 of section 33.1-20-08-07, except that only the most recent closure plan must be maintained in the facility's operating record and publicly accessible CCR website.
 - (5) The written demonstrations, including the certification required by paragraph 3 of subdivision e of subsection 3 of section 33.1-20-08-07, for a time extension for initiating closure as required by subparagraph c of paragraph 3 of subdivision e of subsection 3 of section 33.1-20-08-07.
 - (6) The written demonstrations, including the certification required by paragraph 4 of subdivision f of subsection 3 of section 33.1-20-08-07, for a time extension for initiating closure as required by subparagraph d of paragraph 2 of subdivision f of subsection 3 of section 33.1-20-08-07.
 - (7) The notification of intent to close a CCR unit as required by subdivision g of subsection 3 of section 33.1-20-08-07.
 - (8) The notification of completion of closure of a CCR unit as required by subdivision h of subsection 3 of section 33.1-20-08-07.
 - (9) The notification recording a notation on the deed as required by subdivision i of subsection 3 of section 33.1-20-08-07.
 - (10) The notification of intent to comply with the alternative closure requirements as required by paragraph 1 of subdivision d of subsection 4 of section 33.1-20-08-07.
 - (11) The annual progress reports under the alternative closure requirements as required by paragraph 2 of subdivision d of subsection 4 of section 33.1-20-08-07.
 - (12) The written postclosure plan, and any amendment of the plan, as required by subdivision d of subsection 5 of section 33.1-20-08-07, except that only the most recent closure plan must be maintained in the facility's operating record and publicly accessible CCR website.
 - (13) The notification of completion of postclosure care period as required by subdivision e of subsection 5 of section 33.1-20-08-07.

(14) The demonstration, including long-term performance data supporting the reduced postclosure care period as required by paragraph 3 of subdivision c of subsection 5 of section 33.1-20-08-07.

j. Retrofit criteria. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by paragraph 2 of subdivision j of subsection 3 of section 33.1-20-08-07, except that only the most recent retrofit plan must be maintained in the facility's operating record and publicly accessible CCR website.

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures as required by paragraph 1 of subdivision d of subsection 4 of section 33.1-20-08-07.

(3) The annual progress reports required under the alternative requirements as required by paragraph 2 of subdivision d subsection 4 of section 33.1-20-08-07.

(4) The written demonstrations, including the certification in paragraph 4 of subdivision f of subsection 3 of section 33.1-20-08-07, for a time extension for completing retrofit activities as required by paragraph 3 of subdivision j of subsection 3 of section 33.1-20-08-07.

(5) The notification of intent to initiate retrofit of a CCR unit as required by paragraph 5 of subdivision j of subsection 3 of section 33.1-20-08-07.

(6) The notification of completion of retrofit activities as required by paragraph 6 of subdivision j of subsection 3 of section 33.1-20-08-07.

2. Record submission requirements.

a. The submittals required under subdivision e of this subsection must be sent to the department before the close of business on the day the submittal is required to be completed. For purposes of this section, before the close of business means the submittal must be postmarked or sent by electronic mail. If a deadline falls on a weekend or state holiday, the deadline is automatically extended to the next business day.

b. If any CCR unit is located in part within Indian country, notifications of submittals required by this section must be sent to the appropriate tribal authority.

c. Submittals may be combined as long as the deadline requirement for each submittal is met. Submittals may be included in a permit application, plan of operation, ground water monitoring plan, corrective action plan, report, or application for modification of any of these documents, as applicable.

d. Unless otherwise required in this section, the submittals specified in this section must be sent to the department within thirty days of placing in the facility's operating record. If the department does not approve any of the documents, the owner or operator of the CCR unit shall modify the document and resubmit it to the department for approval. The final approved document must be placed in the facility operating record and on the publicly accessible CCR website within thirty days of approval by the department and the unapproved document must be removed.

e. All documents, plans, assessments, demonstrations, certifications, and reports placed in the facility operating record and on the publicly accessible CCR website, as specified in subdivisions e through j of subsection 1, must be submitted to the department, except:

- (1) Documentation of the permanent identification marker specified under paragraph 4 of subdivision f of subsection 1.
- (2) Documentation of the results of each weekly impoundment inspection by a qualified person as specified under paragraph 5 of subdivision g of subsection 1.
- (3) Documentation of the results of each weekly landfill inspection by a qualified person as specified under paragraph 8 of subdivision g of subsection 1.
- (4) Documentation of the design, installation, development, and decommissioning of any monitoring wells; piezometers; and other measurement, sampling, and analytical devices as specified under paragraph 2 of subdivision h of subsection 1.
- (5) The results of appendices I and II to this chapter constituent concentrations as specified under paragraph 6 of subdivision h of subsection 1.
- (6) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment specified under paragraph 11 of subdivision h of subsection 1.

3. Publicly accessible internet site requirements.

- a. Each owner or operator of a CCR unit subject to the requirements of this chapter shall maintain a publicly accessible internet site (CCR website) containing the information specified in subdivision e. The owner's or operator's website must be titled "CCR Rule Compliance Data and Information".
- b. An owner or operator of more than one CCR unit subject to the provisions of this chapter may comply with the requirements of this section by using the same Internet site for multiple CCR units provided the CCR website clearly delineates information by the name or identification number of each unit.
- c. Unless otherwise required in this chapter, the information required to be posted to the CCR website must be made available to the public for as long as it is required to be in the facility operating record.
- d. Unless otherwise required in this chapter, the information must be posted to the CCR website within thirty days of placing the pertinent information required by subsection 1 in the operating record.
- e. Each owner or operator shall place on the facility's publicly accessible CCR website all documents, plans, assessments, demonstrations, certifications, and reports placed in the facility operating record and approved by the department as specified in subdivisions e through j of subsection 1, except:
 - (1) Documentation of the permanent identification marker specified under paragraph 4 of subdivision f of subsection 1.
 - (2) Documentation of the results of each weekly impoundment inspection by a qualified person as specified under paragraph 5 of subdivision g of subsection 1.
 - (3) Documentation of the results of each weekly landfill inspection by a qualified person as specified under paragraph 8 of subdivision g of subsection 1.
 - (4) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as specified under paragraph 2 of subdivision h of subsection 1.

(5) The results of appendices I and II to this chapter constituent concentrations as specified under paragraph 6 of subdivision h of subsection 1.

(6) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment specified under paragraph 11 of subdivision h of subsection 1.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03

Law Implemented: NDCC 23.1-08-03, 23.1-08-04

Appendix I to Chapter 33.1-20-08 - Constituents for Detection Monitoring

<u>Common name¹</u>
<u>Boron</u>
<u>Calcium</u>
<u>Chloride</u>
<u>Fluoride</u>
<u>pH</u>
<u>Sulfate</u>
<u>Total Dissolved Solids (TDS)</u>

¹Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

Appendix I to Chapter 33.1-20-08 - Constituents for Assessment Monitoring

<u>Common name¹</u>
<u>Antimony</u>
<u>Arsenic</u>
<u>Barium</u>
<u>Beryllium</u>
<u>Cadmium</u>
<u>Chromium</u>
<u>Cobalt</u>
<u>Fluoride</u>
<u>Lead</u>
<u>Lithium</u>
<u>Mercury</u>
<u>Molybdenum</u>
<u>Selenium</u>
<u>Thallium</u>
<u>Radium 226 and 228 combined</u>

¹Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

CHAPTER 33.1-20-08.1

33.1-20-08.1-01. Performance and design criteria.

In addition to the requirements of section 33.1-20-04.1-09, the owner or operator of a surface impoundment shall comply with the following:

1. Applicability.
 - a. The design, construction, and operating standards of this section are applicable to surface impoundments that store or treat solid waste, sludges containing free liquids, free liquids containing high concentrations of dissolved solids, or liquids derived from processing or handling solid waste.
 - b. The standards of this section are not applicable to the following units:
 - (1) Surface impoundments which treat wastewater, the discharge of which is subject to federal, state, or local water pollution discharge permits;
 - (2) Surface impoundments which handle agricultural waste generated by farming operations;
 - (3) Lime sludge settling basins;
 - (4) Basins used to collect and store storm water runoff; ~~and~~
 - (5) Oil and gas exploration and production waste regulated under North Dakota Century Code section 38-08-04; ~~and~~
 - (6) CCR surface impoundments subject to chapter 33.1-20-08.
2. The owner or operator must design, construct, and operate each surface impoundment so as to:
 - a. Comply with the surface water and ground water protection standards of chapter 33.1-20-13;
 - b. New units must have a compacted soil liner of a minimum four feet [1.22 meters] of 1×10^{-7} centimeters per second or lesser hydraulic conductivity or any combination of soil liner thickness, underlying soil thickness and hydraulic conductivity, or a flexible membrane liner which would control the migration of waste or waste constituents during the active life of the surface impoundment and, for surface impoundments closed with solid waste in place, during the postclosure period;
 - c. Have dikes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion; and
 - d. Have the freeboard equal to or greater than two feet [61.0 centimeters] to avoid overtopping from wave action or precipitation.
3. Monitoring and inspection.
 - a. While a surface impoundment is in operation, it must be inspected by the owner or operator monthly and after storms to detect evidence of any of the following:
 - (1) Deterioration, malfunctions, or improper operation of control systems;
 - (2) Sudden drops in the level of the impoundment's contents; and

- (3) Severe erosion, seepage, or other signs of deterioration in dikes or other containment devices.
 - b. Prior to placing a surface impoundment into operation or prior to renewed operation after six months or more during which the impoundment was not in service, a qualified professional engineer must certify that the impoundment's dike and liner have structural integrity.
4. Emergency repairs and contingency plans.
 - a. When a malfunction occurs in the waste containment system which can cause a release to land or water, a surface impoundment must be removed from service and the owner or operator must take the following actions:
 - (1) Immediately shut down the flow of additional waste into the impoundment;
 - (2) Immediately stop the leak and contain the waste which has been released;
 - (3) Take steps to prevent catastrophic failure;
 - (4) If a leak cannot be stopped, empty the impoundment;
 - (5) Clean up all released waste and any contaminated materials; and
 - (6) Notify the department of the problem within twenty-four hours after detecting the problem.
 - b. As part of the contingency plan, the owner or operator must specify a procedure for complying with the requirements of subdivision a of this subsection.
 - c. No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:
 - (1) If the impoundment was removed from service as the result of actual or imminent dike failure, the owner or operator must certify the dike's structural integrity; and
 - (2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, the following actions must be taken:
 - (a) For any existing portion of the impoundment without a liner, a liner must be installed; and
 - (b) For any portion of the impoundment that is lined, the liner must be repaired and the owner or operator must certify that the repaired liner meets the design specification approved in the permit.
 - d. A surface impoundment, that has been removed from service in accordance with the requirements of this subsection and that is not repaired within six months, must be closed in accordance with the provisions of sections 33.1-20-04.1-05 and 33.1-20-04.1-09.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-10

33.1-20-10-03. Waste disposal.

In addition to the requirements of section 33.1-20-01.1-08 and chapter 33.1-20-04.1, the owner or operator of a landfill shall comply with the performance and design criteria as follows:

1. Any new or lateral expansion of a landfill must be designed with a hydraulic barrier and leachate management system.
 - a. Synthetic liners, leachate detection systems, and leachate removal systems must be compatible with solid waste disposed and the waste's leachate.
 - b. Leachate removal and management systems must be capable of collecting and removing leachate and contaminated surface water.
 - c. Synthetic liners and leachate removal systems must withstand all physical and chemical stresses during the operating period and through the postclosure period.
 - d. The synthetic liners and leachate removal systems must have a collection efficiency of ninety-seven percent or better of precipitation falling on the fill area before closure and must be capable of removing leachate to limit the hydraulic head above the upper liner, exclusive of collection sumps, to twelve inches [30.5 centimeters] or less within thirty-six hours of a precipitation event.
 - e. A composite liner is required which includes at a minimum from bottom to top:
 - (1) At least three feet [91.4 centimeters] of recompact clay with a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second;
 - (2) A synthetic flexible membrane liner at least sixty mil thick;
 - (3) A secondary drainage layer with a hydraulic conductivity of 1×10^{-3} centimeters per second or greater throughout and with sufficient thickness to provide a transmissivity of 3×10^{-2} centimeters squared per second or greater;
 - (4) A synthetic flexible membrane liner at least eighty mil thick; and
 - (5) A drainage layer with a hydraulic conductivity of 1×10^{-3} centimeters per second or greater and with sufficient thickness to provide a transmissivity of 3×10^{-2} centimeters squared per second or greater.
 - ~~f. No composite liner may be exposed to freezing more than one winter season. At least three feet of solid waste or other material approved by the department must be placed above the upper drainage layer on all lined areas by December first. No disposal may take place after December first in areas which have not met this requirement without first testing the composite liner's integrity and receiving approval from the department.~~
2. The facility must include a leachate detection and removal system and an onsite leachate management system or offsite leachate management.
 - a. The amount of leachate collected for onsite or offsite management must be measured and recorded.
 - b. The quality of the leachate must be periodically evaluated on a schedule proposed by the facility owner and approved by the department.

- c. The department may require the construction of onsite surface impoundments to achieve the equivalent or better design standards of onsite landfills, based on site specific factors such as hydrogeological characteristics, anticipated leachate quality, anticipated static head or expected duration of use.
 - d. The department may require an owner or operator to control wildlife access to onsite surface impoundments based upon leachate quality and site circumstances.
3. Runoff must be contained, collected, and transferred to an onsite surface impoundment, unless another management method is approved by the department.
 4. Solid waste disposal in landfills must be limited to those wastes identified in the permit application, waste acceptance plan, or permit. Regulated infectious waste, used oil as a free liquid which can be recovered or recycled, and hazardous waste may not be accepted for disposal at the landfill. TENORM waste may only be accepted under the provisions of chapter 33.1-20-11.
 5. All solid wastes deposited at the landfill must be placed, spread, or compacted to minimize or prevent settlement and to promote drainage of surface water. The sequence and direction of below-grade operations must be conducted to prevent surface water from entering the active fill area.
 6. On all areas of the landfill where final cover or additional solid waste will not be placed within one month, eight inches [20.3 centimeters] or more of compacted clay-rich soil material, similar material, or a synthetic cover must be placed to prevent ponding of surface water, to minimize infiltration of surface water, and to control windblown dust.
 7. The composite liner in combination with the final cover after closure must achieve an efficiency of at least ninety-nine and nine-tenths percent or better for collection or rejection of the precipitation that falls on the landfill.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, §§ 18, 23

CHAPTER 33.1-20-11

33.1-20-11-03. Authorization.

Approval for acceptance of TENORM waste by a landfill not previously authorized to accept such waste in its permit shall follow procedures in section ~~33.1-20-02.1-06~~33.1-20-02.1-07. The facility is also subject to applicable approval and licensure requirements of chapter 33.1-10-23.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, §§ 18, 23

33.1-20-11-07. Record of notice.

The records of notice required by section ~~33.1-20-02.1-04~~33.1-20-02.1-05 shall specify that the landfill is approved to accept TENORM waste. The final record of notice shall indicate the total quantity of TENORM waste disposed in the landfill.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, §§ 18, 23

CHAPTER 33.1-20-12 REGULATED INFECTIOUS WASTE

Section

- 33.1-20-12-01 Definitions
- 33.1-20-12-02 Management Standards
- 33.1-20-12-03 Recordkeeping Requirements

33.1-20-12-01. Definitions.

1. As used in this article, "regulated infectious waste" means an infectious waste which is listed in subdivisions a through g of this subsection. Ash from incineration and residues from disinfection processes are not infectious waste once the incineration or the disinfection has been completed.
 - a. Cultures and stocks. Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.
 - b. Pathological waste. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

Human body fluids include: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids.
 - c. Human blood and blood products. Liquid waste human blood; products of blood; items saturated or dripping with human blood; or items that were saturated or dripping with human blood that are now caked with dried human blood (including serum, plasma, and other blood components, and their containers) and are capable of releasing these materials during handling.
 - d. Sharps. ~~Sharps that have~~ Any contaminated object that has been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including that can cut or penetrate the skin. This includes hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, ~~and~~ culture dishes (regardless of presence of infectious agents), and exposed ends of dental wires. Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips.
 - e. Animal waste. Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biological, or testing of pharmaceuticals.
 - f. Isolation waste. Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

"Highly communicable diseases" means diseases, such as those caused by organisms classified by the federal centers for disease control and prevention as biosafety level IV

organisms, that, in the opinion of the infection control staff, the department, local health officer, attending physician and surgeon, or attending veterinarian, merit special precautions to protect staff, patients, and other persons from infection. "Highly communicable diseases" does not include diseases such as the common cold, influenza, or other diseases not representing a significant danger to nonimmunocompromised persons.

- g. Unused sharps. ~~Unused~~This waste includes the following unused, discarded sharps: hypodermic needles, intravenous or other needles, hypodermic or intravenous syringes, suture needles, and/or scalpel blades.
2. As used in this chapter, "disinfection or disinfect" means ~~to remove, inactivate, or destroy blood borne pathogens on a surface or item to the point where the surface or item is no longer capable of transmitting infectious particles~~treatment or processing of infectious waste so that it poses no risk of infection or other health risk to individuals handling or otherwise coming into contact with the waste. The term includes autoclaving, chemical disinfection, radiation and irradiation, and incineration.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-12-02. Management standards.

~~In addition to sections 33.1-20-01.1-04, 33.1-20-01.1-05, 33.1-20-02.1-01, and 33.1-20-04.1-08, every~~Every person who collects, stores, transports, treats, or disposes of regulated infectious waste shall comply with these standards of performance.

1. At the point of origin, regulated infectious waste must be separated from other wastes and placed in distinctive containers which do not leak and which are impervious, puncture resistant, and tear resistant and which contain obvious markings (for example, red or orange plastic bags or the biohazard label). Bags and containers holding regulated infectious waste must be tied, closed, or sealed securely to prevent leakage. Prior to shipment offsite, all containers must comply with all appropriate federal and state department of transportation packaging and labeling requirements.
2. At the point of origin, sharps must be:
 - a. Separated from other regulated infectious waste, disinfected onsite, rendered nonsharp onsite, and then disposed; or
 - b. Placed in ~~rigid and puncture-resistant biohazard~~ containers containers that are:
 - (1) Closable;
 - (2) Puncture resistant;
 - (3) Leak-proof on sides and bottom; and
 - (4) Labeled or color-coded in accordance with 29 CFR 1910.1030and handled as required by subsection 5.
3. The handling and storage of regulated infectious waste, before the treatment of subsection ~~57~~, must be conducted in a manner which minimizes exposure to employees of the waste generator, the waste transporter, and the public.

4. Areas used for the storage of regulated infectious waste must be enclosed and meet the following requirements:

a. Storage rooms, buildings, or areas must be of rodentproof construction which is readily cleanable with proper drainage.

b. Storage rooms or buildings, if not refrigerated, must be adequately vented and all openings must be screened.

5. Containers and enclosed storage areas used for regulated infectious waste must be maintained according to the following requirements:

a. All containers and enclosed areas for storage of solid waste must be maintained in good repair and in a manner as necessary to prevent litter, nuisances, odors, insect breeding, and rodents.

b. Containers that are broken or otherwise fail to meet requirements of this section must be replaced with complying containers.

6. Recycled containers or devices such as carts used for the handling of wastes must be disinfected after each use. The disinfectant must be either an United States environmental protection agency registered disinfectant that is also tuberculocidal, for a contact time as specified by the manufacturer, an unexpired dated stabilized bleach product that is an United States environmental protection agency registered disinfectant that is also tuberculocidal, for a contact time and as specified by the manufacturer or materials necessary to prepare a minimum ten percent sodium hypochlorite solution prepared immediately prior to use with a minimum thirty minutes of contact time with the container.

~~5-7.~~ All regulated infectious waste must be incinerated or disinfected and sharps that are not incinerated must be rendered nonsharp before disposal. Incineration and disinfection equipment and facilities shall meet the requirements of article 33.1-15 and this article.

~~6-8.~~ Blood and blood products can be discarded without incineration or disinfection through municipal sewage disposal systems that meet the requirements of article 33.1-16.

~~7-9.~~ The disposal of nonviable human fetuses shall meet the requirements of section 33.1-03-02-05.

~~8-10.~~ An infectious waste which is not regulated by this chapter may be disposed at a permitted municipal waste landfill.

~~9-11.~~ Household waste containing regulated infectious waste in amounts normally found in household waste may be disposed of at a permitted municipal waste landfill.

12. Every person who treats or transports regulated infectious waste or operates a regulated infectious waste management unit or facility shall have a valid permit issued by the department.

13. Vehicles used for the commercial collection and transportation of regulated infectious waste must be fully leakproof and fully enclosed or covered to prevent scattering of material.

a. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit.

b. Regulated infectious waste must not be allowed to become putrescent during transportation.

c. Any spilled material must be immediately returned to the transport vehicle or container and, if necessary, the area must be cleaned and decontaminated.

14. The owner or operator of a permitted regulated infectious waste treatment facility shall comply with these standards:

a. Regulated infectious waste must be confined to storage containers and areas specifically designed to store waste. Waste handling and storage systems must provide sufficient excess capacity to prevent nuisances, environmental impacts, or health hazards in the event of mechanical failure or unusual waste flows.

b. All residues must be controlled and stored in a manner that does not constitute a fire or safety hazard or a sanitary nuisance.

c. The regulated infectious waste management facility may not cause a violation of the ambient air quality standard or odor rules, article 33.1-15, at the facility boundary.

d. All incinerators used for regulated infectious waste must be constructed and operated in compliance with article 33.1-15.

e. The owner or operator shall demonstrate that the treatment unit renders infectious waste noninfectious. The operator shall follow a written operational manual or documented quality assurance procedures for operating the treatment unit. The treatment unit must be tested at a frequency specified by the manufacturer's instructions or after every forty hours of operation to verify disinfection. Acceptable test methods may be physical, chemical, or microbiological in nature, as appropriate for the treatment method.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-12-03. Recordkeeping requirements.

1. Regulated infectious waste generators shall keep records of the amount of regulated infectious waste sent offsite for treatment. Records may consist of any of the following: copies of regulated infectious waste manifests, invoices, records received from the regulated infectious waste treatment facility, logs, or other written documentation of the amount of regulated infectious waste sent offsite for treatment. These records shall be kept for at least three years after they were created.

2. Permitted regulated infectious waste treatment facilities receiving regulated infectious waste from others for treatment shall maintain a log indicating the approximate quantities of regulated infectious waste received; the date of receipt; and the name and address of the generator from whom the waste was received, operating parameters, and results of any tests run to verify disinfection. The logs shall be maintained for a period of three years.

3. Permitted regulated infectious waste treatment facilities shall prepare and submit a copy of an annual report to the department by March first of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

a. Name and address of the facility;

b. Calendar period covered by the report;

c. Annual quantity for each category of solid waste in tons or volume;

d. Identification of occurrence and conditions that prevented compliance with the permit and this article; and

e. Other items identified in the facility plans and permit.

4. The owner or operator of a regulated infectious waste treatment facility shall prepare and implement a plan of operation approved by the department as part of the permit. The plan must describe the facility's operation to operating personnel, and the facility must be operated in accordance with the plan. The plan of operation must be available for inspection at the request of the department. Each plan of operation must include, where applicable:

a. A description of waste acceptance procedures, including categories of solid waste to be accepted and waste rejection;

b. A description of waste handling procedures;

c. A description of contingency actions for the following:

(1) Fire or explosion;

(2) Leaks;

(3) Other releases (for example, spills); and

(4) Any other issues pertinent to the facility.

d. Safety procedures; and

e. A description of facility inspection activities required by subsection 5 including frequency of inspections.

5. The owner or operator shall inspect the facility to ensure compliance with this article, a permit, and approved plans. The owner or operator shall keep an inspection log including information, such as the date of inspection, the name of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action taken.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-13

33.1-20-13-02. Ground water quality monitoring.

1. An owner or operator of a resource recovery unit, a land treatment unit, a surface impoundment, or a landfill, except an inert waste landfill, must incorporate a ground water monitoring system into the design of the facility. An owner or operator of a CCR unit that is subject to the provisions of chapter 33.1-20-08 is exempt from the requirements of this section. If the owner or operator demonstrates to the department that there is no potential for migration of solid waste constituents to the uppermost aquifer during the life of the solid waste management unit and the postclosure period, the department may suspend this requirement. The demonstration must be based upon factors such as the site characterization, the solid waste characteristics and constituents, the potential capacity of the unit or facility, and the physical, chemical, and biological processes affecting contaminant fate and transport.
2. Ground water monitoring systems must be designed to effectively detect the migration of contamination. At a minimum, a water quality monitoring system shall:
 - a. Include one ground water monitoring well located upgradient of the solid waste management unit, and at least two wells located downgradient of the unit. The monitoring wells should be installed at appropriate locations and depths to yield ground water from the uppermost aquifer and all hydraulically connected aquifers below the solid waste management units on the facility;
 - b. Represent the elevation of ground water in each well immediately prior to purging so that the owner or operator may determine the rate and direction of ground water flow each time ground water is sampled;
 - c. Represent the quality of ground water that has not been affected by spills or leakage from solid waste management units;
 - d. Represent the quality of ground water to ensure detection of contamination passing the compliance boundary;
 - e. Ground water samples at municipal waste landfills must not be filtered prior to analysis; and
 - f. The frequency and number of samples collected must be consistent with statistical procedures for evaluating ground water data. A minimum of four independent samples from each well must be collected for analysis during the first sampling event for establishing background data at upgradient (subdivision c) and downgradient (subdivision d) wells, unless four or more sampling events occur prior to acceptance of solid waste by the facility. The monitoring frequency must be semiannual during the active life of the facility and during the postclosure period. The department may specify an alternate frequency for sampling based upon such factors as site hydrogeological characteristics, solid waste characteristics, evidence of a spill or leakage, or resource value of the aquifer.
3. Additional wells may be required in complicated hydrogeological settings or to define the extent of contamination detected.
4. A written ground water monitoring plan must be developed for approval by the department and implemented as part of the permitting process. The plan must include:
 - a. Number and location of wells;
 - b. Procedures for decontamination of drilling and sampling equipment;

- c. Procedures for sample collection;
 - d. Sample analytical procedures;
 - e. Chain of custody control;
 - f. Parameters for analysis;
 - g. Quality assurance or quality control procedures;
 - h. A monitoring schedule;
 - i. Data statistical methods and analysis procedures; and
 - j. Reporting of a statistically significant increase over a background value or of an exceedance of a maximum concentration limit or a water quality standard.
5. Ground water monitoring data obtained under this section must be analyzed within a reasonable period of time after completing sampling and laboratory analysis to determine whether or not a statistically significant increase over background values or an exceedance of a maximum concentration limit or water quality standard has occurred for each parameter required in the monitoring plan or permit. Statistical methods must, as appropriate:
- a. Be appropriate for the distribution of the data and, if inappropriate for a normal theory test, be transformed or a distribution-free theory test must be used.
 - b. Control or correct for seasonal and spatial variability in the data.
 - c. Account for data below the limit of detection that can be reliably achieved by routine laboratory techniques, using the limit as the lowest concentration level for a chemical parameter which is below detection.
 - d. Be protective of human health and environmental resources.

History: Effective January 1, 2019; [amended effective July 1, 2020.](#)

General Authority: NDCC 23.1-08-03, 23.1-11-05, 23.1-11-11, 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-11-05, 23.1-11-06, 23.1-11-08, 23.1-11-11, 61-28-04; S.L. 2017, ch. 199, §§ 23, 26

33.1-20-13-03. Water quality standards.

1. All solid waste management systems, operations, units, and facilities must be designed, constructed, operated, maintained, closed, and maintained after closure so as to be in compliance with North Dakota Century Code chapter 61-28, and water quality standards defined in articles 33.1-16 and 33.1-17. Compliance with these standards is enforceable at the compliance boundary of the facility.
2. Whenever ground water monitoring is required, the department must specify in the facility permit the specific elements of ground water monitoring, including indicator parameters which are constituents in or derived from solid waste, the maximum concentration limits in ground water for each parameter not otherwise defined by subsection 1, and the compliance boundary, considering:
 - a. The physical and chemical characteristics of the waste, including the potential for migration in surface water, in the unsaturated zone beneath the facility, and in ground water;

- b. The hydrogeological characteristics of the site and the surrounding land;
 - c. The existing quality and quantity of ground water, other possible sources of contamination, and the direction of ground water flow;
 - d. The detectability of the indicator parameters or constituents in surface water or in ground water; or
 - e. The proximity of the facility to surface waters; and
 - f. Appropriate parameters from the list in table 1.
3. The compliance boundary shall be located on land owned by the owner of the facility and no more than five hundred feet [152.4 meters] from a landfill or landfill disposal cell.

TABLE 1 List of Parameters for Assessing Ground Water Quality

a. Parameters measured in the field:

- (1) Appearance (including color, foaming, and ~~odor~~odor)
- (2) pH¹
- (3) Specific conductance²
- (4) Temperature
- (5) Water elevation³

b. General geochemical parameters:

- | | |
|----------------------|-----------------------------------|
| (1) Ammonia nitrogen | (11) Chloride |
| (2) Total hardness | (12) Fluoride |
| (3) Iron | (13) Nitrate + Nitrite, as N |
| (4) Calcium | (14) Total phosphorus |
| (5) Magnesium | (15) Sulfate |
| (6) Manganese | (16) Sodium |
| (7) Potassium | (17) Total dissolved solids (TDS) |
| (8) Total alkalinity | (18) Total suspended solids (TSS) |
| (9) Bicarbonate | (19) Cation/anion balance |
| (10) Carbonate | |

c. Heavy metals:

Group A:

- (1) Arsenic
- (2) Barium
- (3) Cadmium
- (4) Chromium
- (5) Lead
- (6) Mercury
- (7) Selenium
- (8) Silver

Group B:

- (9) Antimony
- (10) Beryllium
- (11) Cobalt
- (12) Copper
- (13) Nickel
- (14) Thallium
- (15) Vanadium
- (16) Zinc

d. Total organic carbon (TOC)

e. Chemical oxygen demand (COD)

e-f. Naturally occurring radionuclides:

- (1) Radon
- (2) Radium
- (3) Uranium

f.g. ~~Volatile~~Volatile organic compounds, both halogenated and nonhalogenated:

Halogenated:

- | | |
|----------------------|----------------------------|
| Acrylonitrile | 1,1-Dichloroethylene |
| Allyl chloride | 1,2-Dichloropropane |
| Bromochloromethane | cis-1,3-Dichloropropene |
| Bromodichloromethane | cis-1,2-Dichloroethylene |
| Bromoform | trans-1,2-Dichloroethylene |
| Bromomethane | trans-1,3-Dichloropropene |

Carbon disulfide	trans-1,4-Dichloro-2-butene
Carbon tetrachloride	Dichlorofluoromethane
Chlorobenzene	Dichloromethane (methylene chloride)
(monochlorobenzene)	1,3-Dichloropropene
Chlorodibromomethane	2,3-Dichloro-1-propene
Chloroethane	Pentachloroethane
Chloroform	1,1,1,2-Tetrachloroethane
Chloromethane	1,1,2,2-Tetrachloroethane
Dibromomethane	Tetrachloroethylene
1,2-Dibromo-3-chloropropane	1,1,1-Trichloroethane
1,2-Dibromoethane	1,1,2-Trichloroethane
Dichloroacetonitrile	Trichloroethylene
1,2-Dichlorobenzene	Trichlorofluoromethane
1,3-Dichlorobenzene	1,2,3-Trichloropropane
1,4-Dichlorobenzene	1,1,2-Trichlorotrifluoroethane
Dichlorodifluoromethane	Vinyl acetate
1,1-Dichloroethane	Vinyl chloride
1,2-Dichloroethane	

Nonhalogenated:

Acetone	Methyl isobutyl ketone
Benzene	Pyrene
Cumene	Styrene
Ethylbenzene	Tetrahydrofuran
Ethyl ether	Toluene
Methyl butyl ketone	m-Xylene
Methyl ethyl ketone	o-Xylene
Methyl iodide	p-Xylene

g-h Pesticides:

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Aldrin	Endrin
Chlordane	Heptachlor
Chloroform	Lindane
4,4 DDT	Methyl bromide
Dibenzofuran	Methyl methacrylate
Dieldrin	Methylene bromide
Dimethoate	Naphthalene
Endosulfan	Parathion

¹ Two measurements: in field, and immediately upon sample's arrival in laboratory.

² As measured in field.

³ As measured to the nearest 0.01 foot in field before pumping or bailing.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-08-03, 23.1-11-05, 23.1-11-11, 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-11-05, 23.1-11-06, 23.1-11-08, 23.1-11-11, 61-28-04; S.L. 2017, ch. 199, §§ 23, 26

33.1-20-13-05. Assessment monitoring, remedial measures, and corrective action.

1. Within ninety days of finding that a parameter has been detected at a statistically significant level exceeding the ground water standards established under sections 33.1-20-13-02 and

33.1-20-13-03, the owner or operator shall initiate an assessment of remedial measures. An owner or operator of a CCR unit that is subject to the provisions of chapter 33.1-20-08 is exempt from the requirements of this section. The assessment must:

- a. Be completed within a reasonable time period, unless otherwise specified by permit or the department;
 - b. Include an evaluation of the nature and extent of the release of the constituents including pathways to human and environmental receptors;
 - c. For municipal landfills, include ground water sampling and analysis for all parameters listed in appendix 1 of this chapter. The department may delete any of the appendix 1 parameters if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste within the leaking facility;
 - d. Include an analysis of the effectiveness of potential remedial measures in meeting all requirements of subsection 2 and include the following:
 - (1) The performance, reliability, ease of implementation, and potential impacts of each potential remedial measure;
 - (2) The time required to begin and complete each potential remedial measure;
 - (3) The costs of implementation of each potential remedial measure; and
 - (4) The permit requirements or other environmental or public health requirements that may substantially affect implementation of each potential remedial measure; and
 - e. When requested by the department, the owner or operator must discuss results of the assessment of remedial measures, prior to selection of a corrective action remedy, in a public meeting with interested and affected persons.
2. Based on the results of the assessment of remedial measures conducted under subsection 1, the owner or operator must select a corrective action remedy within thirty days which, at minimum, meets the following standards:
- a. Is protective of human health and environmental resources;
 - b. Attains the ground water protection standards under sections 33.1-20-13-02 and 33.1-20-13-03;
 - c. Controls the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of constituents that may pose a threat to human health or environmental resources; and
 - d. Complies with this article and other applicable environmental statutes and rules.
3. When selecting a corrective action remedy under subsection 2, the owner or operator shall consider these factors:
- a. The short-term and long-term effectiveness of the potential remedial measure considering:
 - (1) Magnitude of reducing exposure to constituents;
 - (2) Likelihood of further releases;
 - (3) Practical capability of technologies; and

- (4) Time until the standards are achieved.
 - b. The ease or difficulty of implementing the potential remedial measure considering:
 - (1) Availability of equipment and specialists;
 - (2) Long-term management needs such as monitoring, operation, and maintenance; and
 - (3) Need to coordinate with and obtain necessary approvals or permits from other agencies.
 - c. The need for interim measures to control the sources of the release and to protect human health and environmental resources.
 - d. The schedules for initiating, conducting, and completing the potential remedial measure.
 - e. Practical capability of the owner or operator.
4. The owner or operator shall provide the department with a document fully describing the remedial measures assessment under subsection 1 and the selected corrective action remedy under subsections 2 and 3.
 5. Upon selection of the corrective action remedy under subsection 2 and with the concurrence of the department, the owner or operator shall establish and implement the remedy.
 - a. During implementation, the owner or operator shall monitor the effectiveness of the remedy.
 - b. Implementation shall be considered complete when all actions and standards required to complete the remedy have been satisfied and approved by the department.
 - c. Upon completion of a corrective action remedy, the owner or operator shall place in the operating record a certification that the corrective action remedy has been completed. Within fourteen days of completion of the certification, the owner or operator shall notify the department that the certification has been placed in the operating record.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-08-03, 23.1-11-11, 61-28-04, 61-28-05; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-11-02, 23.1-11-06, 23.1-11-08, 61-28-04; S.L. 2017, ch. 199, §§ 23, 26

Appendix I to Section 33.1-20-13-05 - List of Hazardous Inorganic and Organic Constituents

Acenaphthene	Chrysene
Acenaphthylene	Cobalt
Acetone	Copper
Acetonitrile; Methyl cyanide	m-Cresol; 3-methylphenol
Acetophenone	o-Cresol; 2-Methylphenol
2-Acetylaminofluorene; 2-AAF	p-Cresol; 4-Methylphenol
Acrolein	Cyanide
Acrylonitrile	2,4-D; 2,4-Dichlorophenoxyacetic acid
Aldrin	4,4'-DDD
Allyl chloride	4,4'-DDE
4-Aminobiphenyl	4,4'-DDT
Anthracene	Diallate
Antimony	Dibenz[a,h]anthracene
Arsenic	Dibenzofuran
Barium	Dibromochloromethane; Chlorodibromomethane
Benzene	1,2-Dibromo-3-chloropropane; DBCP
Benzo[a]anthracene; Benzanthracene	1,2-Dibromoethane; Ethylene dibromide; EDB
Benzo[b]fluoranthene	Di-n-butyl phthalate
Benzo[k]fluoranthene	o-Dichlorobenzene; 1,2-Dichlorobenzene
Benzo[ghi]perylene	m-Dichlorobenzene; 1,3-Dichlorobenzene
Benzo[a]pyrene	p-Dichlorobenzene; 1,4-Dichlorobenzene
Benzyl alcohol	3,3'-Dichlorobenzidine
Beryllium	trans-1,4-Dichloro-2-butene
alpha-BHC	Dichlorodifluoromethane; CFC 12
beta-BHC	1,1-Dichloroethane; Ethyldiene chloride
delta-BHC	1,2-Dichloroethane; Ethylene dichloride
gamma-BHC; Lindane	1,1-Dichloroethylene; 1,1-Dichloroethene
Bis(2-chloroethoxy)methane	Vinylidene chloride cis-1,2-Dichloroethylene;
Bis(2-chloroethyl)ether; Dichloroethyl ether	cis-1,2-Dichloroethene
Bis-(2-chloro-1-methylethyl) ether;	trans-1,2-Dichloroethylene;
2,2'-Dichlorodiisopropyl ether; DCIP	trans-1,2-Dichloroethene
Bis-(2-ethylhexyl) phthalate	2,4-Dichlorophenol
Bromochloromethane; Chlorobromomethane	2,6-Dichlorophenol
Bromodichloromethane; Dibromochloromethane	1,2-Dichloropropane; Propylene dichloride
Bromoform; Tribromomethane	1,3-Dichloropropane; Trimethylene dichloride
4-Bromophenyl phenyl ether	2,2-Dichloropropane; Isopropylidene chloride
Butyl benzyl phthalate; Benzyl butyl phthalate	1,1-Dichloropropene
Cadmium	cis-1,3-Dichloropropene
Carbon disulfide	trans-1,3-Dichloropropene
Carbon tetrachloride	Dieldrin
Chlordane	Diethyl phthalate
p-Chloroaniline	O,O-Diethyl O-2-pyrazinyl
Chlorobenzene	phosphorothioate; Thionazin
Chlorobenzilate	Dimethoate
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	p-(Dimethylamino)azobenzene
Chloroethane; Ethyl chloride	7,12-Dimethylbenz[a]anthracene
Chloroform; Trichloromethane	3,3'-Dimethylbenzidine
2-Chloronaphthalene	2,4-Dimethylphenol; m-Xylenol
2-Chlorophenol	Dimethyl phthalate
4-Chlorophenyl phenyl ether	m-Dinitrobenzene
Chloroprene	4,6-Dinitro-o-cresol 4,6-Dinitro-2 methylphenol
Chromium	2,4-Dinitrophenol

2,4-Dinitrotoluene
 2,6-Dinitrotoluene
 Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol
 Di-n-octyl phthalate
 Diphenylamine
 Disulfoton
 Endosulfan I
 Endosulfan II
 Endosulfan sulfate
 Endrin
 Endrin aldehyde
 Ethylbenzene
 Ethyl methacrylate
 Ethyl methanesulfonate
 Famphur
 Fluoranthene
 Fluorene
 Heptachlor
 Heptachlor epoxide
 Hexachlorobenzene
 Hexachlorobutadiene
 Hexachlorocyclopentadiene
 Hexachloroethane
 Hexachloropropene
 2-Hexanone; Methyl butyl ketone
 Indeno(1,2,3-cd)pyrene
 Isobutyl alcohol
 Isodrin
 Isophorone
 Isosafrole
 Kepone
 Lead
 Mercury
Methacrylonitrile
 Methapyrilene
 Methoxychlor
 Methyl bromide; Bromomethane
 Methyl chloride; Chloromethane
 3-Methylcholanthrene
 Methyl ethyl ketone; MEK; 2-Butanone
 Methyl iodide; Iodomethane
 Methyl methacrylate
 Methyl methanesulfonate
 2-Methylnaphthalene
 Methyl parathion; Parathion methyl
 4-Methyl-2-pentanone; Methyl
 isobutyl ketone
 Methylene bromide; Dibromomethane
 Methylene chloride; Dichloromethane
 Naphthalene
 1,4-Naphthoquinone
 1-Naphthylamine
 2-Naphthylamine
 Nickel
 o-Nitroaniline; 2-Nitroaniline
 m-Nitroaniline; 3-Nitroaniline
 p-nitroaniline; 4-Nitroaniline
 Nitrobenzene
 o-Nitrophenol; 2-Nitrophenol
 p-Nitrophenol; 4-Nitrophenol
 N-Nitrosodi-n-butylamine
 N-Nitrosodiethylamine
 N-Nitrosodimethylamine
 N-Nitrosodiphenylamine
 N-Nitrosodipropylamine; N-Nitroso-
 N-dipropylamine; Di-n-propylnitrosamine
 N-Nitrosomethylethylamine
 N-Nitrosopiperidine
 N-Nitrosopyrrolidine
 5-Nitro-o-toluidine
 Parathion
 Pentachlorobenzene
 Pentachloronitrobenzene
 Pentachlorophenol
 Phenacetin
 Phenanthrene
 Phenol
 p-Phenylenediamine
 Phorate
 Polychlorinated biphenyls; PCBs; Aroclors
 Pronamide
 Propionitrile; Ethyl cyanide
 Pyrene
 Safrole
 Selenium
 Silver
 Silvex; 2,4,5-TP
 Styrene
 Sulfide
 2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid
 1,2,4,5-Tetrachlorobenzene
 1,1,1,2-Tetrachloroethane
 1,1,2,2-Tetrachloroethane
 Tetrachloroethylene; Tetrachloroethene;
 Perchloroethylene
 2,3,4,6-Tetrachlorophenol
 Thallium
 Tin
 Toluene
 o-Toluidine
 Toxaphene
 1,2,4-Trichlorobenzene
 1,1,1-Trichloroethane; Methylchloroform
 1,1,2-Trichloroethane
 Trichloroethylene; Trichloroethene
 Trichlorofluoromethane; CFC-11
 2,4,5-Trichlorophenol
 2,4,6-Trichlorophenol

1,2,3-Trichloropropane
O,O,O-Triethyl phosphorothioate
sym-Trinitrobenzene
Vanadium

Vinyl acetate
Vinyl chloride; Chloroethene
Xylene (total)
Zinc

History: Effective January 1, 2019.

CHAPTER 33.1-20-14 FINANCIAL ASSURANCE REQUIREMENTS

Section

33.1-20-14-01	Financial Assurance for Solid Waste Disposal Facilities
33.1-20-14-02	Cost Estimates for Closure and Postclosure
33.1-20-14-03	Financial Assurance Mechanism for Closure and Postclosure
33.1-20-14-04	Implementation of Financial Assurance for Closure and Postclosure
33.1-20-14-05	Financial Assurance for Corrective Action
33.1-20-14-06	Liability Requirements for Industrial Waste Landfills
33.1-20-14-07	Specific Requirements of Mechanisms for Financial Assurance
<u>33.1-20-14-08</u>	<u>Release of the Owner or Operator from the Requirements of this Section</u>

33.1-20-14-01. Financial assurance for solid waste disposal facilities.

1. The requirements of this chapter apply to all new and expanded solid waste disposal facilities and to existing solid waste disposal facilities that have not been closed by April 9, 1994. These requirements do not apply to inert waste landfills.
2. New or expanded facilities must demonstrate financial assurance prior to acceptance of solid waste and existing facilities by the date given in subsection 1.
3. Owners of facilities may set up one mechanism or multiple mechanisms to demonstrate financial assurance for both closure and postclosure care of each facility. The amount of funds available through the mechanisms must be no less than the sum of funds that would be available if a separate single mechanism had been established and maintained for financial assurance of closure and of postclosure care.
4. Mechanisms used to demonstrate financial assurance under this chapter must ensure that the amount of funds assured is adequate to cover the costs of closure and postclosure care and that the funds will be available in a timely fashion whenever needed, until released from the financial assurance requirement by the department.
5. Mechanisms must be legally valid and binding under North Dakota law.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-03. Financial assurance mechanism for closure and postclosure.

1. Each owner or operator of an applicable solid waste disposal facility shall establish one or more financial assurance mechanisms which together total an amount equal to the closure cost estimate or postclosure cost estimate prepared in accordance with section 33.1-20-14-02.
2. An owner or operator may satisfy the requirements for financial assurance for both closure and postclosure care by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a single mechanism had been established and maintained for financial assurance of closure and of postclosure care.
3. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be specified in this section, except that it is the combination of mechanisms, rather than the single mechanism which must provide financial assurance for an amount at least equal to the current closure or postclosure, or both, cost estimate. If an owner or operator uses a trust fund in combination with a surety

bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The department may use any or all of the mechanisms to provide for closure or postclosure, or both, care of the facility.

4. Each financial assurance mechanism must be approved by the department. The following financial assurance mechanisms are acceptable, provided respective requirements of section 33.1-20-14-07 are met:

a. ~~Reserve account;~~

~~b. Trust fund;~~

~~e.b.~~ Surety bond;

~~d.c.~~ Irrevocable letter of credit;

~~e.d.~~ Financial test;

~~f.e.~~ Insurance policy; and

~~g.f.~~ Corporate guarantee in accordance with the form and content of subdivision a of subsection 8 of section 33.1-24-05-81.

3. A trust fund, surety bond, letter of credit, corporate guarantee, financial test, or insurance policy may be terminated or canceled only if alternate financial assurance is substituted or if the owner or operator is released from the requirement by the department.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-04. Implementation of financial assurance for closure and postclosure.

1. The closure plan and postclosure plan required by this article must specify the financial assurance mechanisms required by this chapter and, if a ~~reserve account~~, trust fund, surety bond, or insurance policy, the methods and schedules for funding the mechanisms.

2. ~~Publicly owned solid waste disposal facilities shall comply with the following:~~

~~a. Closure and postclosure financial assurance funds must be generated for each facility as indicated in the closure and postclosure plans;~~

~~b. Each facility owner or operator must establish a procedure with the trustee of the financial assurance mechanism for notification of nonpayment of funds to be sent to the department; and~~

~~c. Each owner or operator shall file with the department no later than August thirty-first of each succeeding year an annual report of the financial assurance mechanism established for closure and postclosure activities.~~

~~3. Privately owned solid waste disposal facilities shall comply with the following:~~

~~a. Each owner or operator shall file with the department no later than August thirty-first of each succeeding year an annual audit of the financial assurance mechanisms established for closure and postclosure activities; and~~

~~b. Annual audits must be conducted by a certified public accountant licensed in the state and must be filed with the department no later than August thirty first of each year for the previous calendar year, including each year of the postclosure period. During the active life of the facility, the owner or operator shall adjust the closure cost estimate and postclosure cost estimate for inflation and shall submit the following information to the department no later than August thirty-first of each year:~~

a. Updated inflation adjusted closure cost estimate and postclosure cost estimate;

b. A summary of financial assurance in place;

c. The submittal date of the most recent detailed cost estimates for closure and postclosure;

d. The maximum allowed open area and quantities;

e. Current estimated open area and quantities; and

f. The mechanisms in use.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-07. Specific requirements of mechanisms for financial assurance.

1. **Trust fund.** A trust fund must satisfy the requirements of this subsection.

a. The trustee must be an entity which has authority to act as a trustee in this state and whose trust operations are regulated and examined by a federal or state agency.

b. Payments into the trust fund must be made annually over the initial permit or over the remaining life of the solid waste management unit or facility, whichever is shorter. This is the pay-in period.

c. The first payment into the trust fund must equal or exceed the current cost estimate for closure or postclosure, whichever is applicable, divided by the number of years defined in subdivision b. The amount of subsequent payments must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

Where CE is the current cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

d. The initial payment into the trust fund must be made for new or expanded facilities before the initial receipt of solid waste or for existing facilities before the effective date as provided by subsection 1 of section 33.1-20-14-01.

e. If an owner or operator establishes a trust fund after having used one or more alternative mechanisms specified in section 33.1-20-14-03, the initial payment into the trust fund must equal or exceed the amount that the fund would contain if the fund were established initially and annual payments made according to subdivision c.

- f. The owner or operator, or other person authorized to conduct closure or postclosure care may request reimbursement from the trustee for these expenses. Requests for reimbursement will be approved by the trustee only if sufficient funds are remaining in the trust fund.
2. **Surety bond.** A surety bond guaranteeing payment or performance must satisfy to the requirements of this subsection.
- a. The penal sum of the bond must be in an amount equal to or greater than the current closure or postclosure cost estimate, whichever is applicable. The surety company issuing the bond, at a minimum, must be among those acceptable sureties on federal bonds in Circular 570 of the United States department of treasury and be authorized to do business within this state.
- b. Under the terms of the bond, the surety must become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- c. The owner or operator must establish a standby trust fund that meets the requirement of subsection 1, except for payment provisions in subdivisions b, c, and d.
- d. Payments made under the terms of the bond must be deposited by the surety into the standby trust fund. Payments from the trust fund must be approved by the trustee.
- e. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department one hundred twenty days or more in advance of the cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance.
3. **Letter of credit.** A letter of credit must satisfy the requirements of this subsection.
- a. The issuing institution of a letter of credit must have authority to issue letters of credit in this state and its operations must be regulated and examined by a federal or state agency.
- b. A letter from the owner or operator, referring to the letter of credit by number, issuing institution, and date and including the name and address of the solid waste management unit or facility and the amount of funds assured, must be provided with the letter of credit to the department.
- c. The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure or postclosure care, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation to the owner or operator and to the department one hundred twenty days or more in advance of the cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.
- d. The owner or operator shall establish a standby trust fund that meets the requirement of subsection 1, except for payment provisions in subdivisions b, c, and d.
4. **Insurance.** Insurance must satisfy the requirements of this subsection.
- a. The insurer must be licensed to transact the business of insurance in this state, or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

- b. The insurance policy must guarantee that funds will be available to close the solid waste management unit or facility whenever closure occurs or to provide postclosure care whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that, once closure or postclosure care begins, the insurer will be responsible for paying out funds ~~to the owner or operator or other person authorized to conduct closure or postclosure care~~ up to an amount equal to the face amount of the policy upon the direction of the department to such party or parties as the department specifies.
- c. The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or postclosure care, whichever is applicable. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- d. Each insurance policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer.
- e. The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay a premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department one hundred twenty days or more in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance.

Cancellation, termination, or failure to renew may not occur; however, during the one hundred twenty days beginning with the date of receipt of a notice by the department and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The department deems the facility abandoned;

(2) The permit is terminated or revoked, or a new permit is denied;

(3) Closure is ordered by the department or a state court or other court of competent jurisdiction;

(4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under United States Code title 11 (bankruptcy); or

(5) The premium due is paid.

- f. After beginning partial or final closure or during the postclosure period, or both, an owner or operator or any other person authorized to perform closure or postclosure may request reimbursement for closure or postclosure expenditures by submitting itemized bills to the department. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum cost of closing the facility over its remaining operating life. After receiving bills for closure or postclosure activities, the department shall determine whether the expenditures are in accordance with the partial or final closure or postclosure plan or otherwise justified and if so, the department shall instruct the insurer to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the department may withhold reimbursement of such

amounts as the department deems prudent until the department determines, in accordance with section 33.1-20-14-08, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the department does not instruct the insurer to make such reimbursement, the department will provide the owner or operator with a detailed written statement of reasons.

5. **Financial test and corporate guarantee.** A financial test or corporate guarantee must satisfy the requirements of this subsection.
 - a. For the financial test, the owner or operator must have:
 - (1) A ratio of current assets to current liabilities greater than one and five-tenths, or a current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
 - (2) Net working capital and tangible net worth each at least four times the sum of the current cost estimates for closure or postclosure, whichever is applicable; and
 - (3) Tangible net worth of at least two million dollars; and
 - (4) Assets located in the United States amounting to at least four times the current cost estimates for closure or postclosure care, whichever is applicable.
 - b. To demonstrate the financial test, the owner or operator must submit the following items to the department in a letter which transmits:
 - (1) A copy of an independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest fiscal year; and
 - (2) A report from an independent certified public accountant to the owner or operator stating that:
 - (a) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, yearend financial statements for the latest fiscal year; and
 - (b) In connection with that procedure, no matters came to lead the accountant to believe that specified data should be adjusted.
 - c. After initial submission of the items in subdivision b, the owner or operator must send updated information to the department no later than August thirty-first of each succeeding fiscal year. This information must consist of all items specified in subdivision b.
 - d. If the owner or operator no longer meets the requirements of subdivision a, the owner or operator must send notice by certified mail to the department within ninety days and establish alternate financial assurance within one hundred twenty days.
 - e. The department may disallow use of the financial test on the basis of qualification in the opinion expressed by the certified public accountant in the accountant's report on examination of owner's or operator's statements. An adverse opinion or a disclaimer of opinion may be cause for disallowance. The owner or operator shall provide alternate financial assurance within thirty days after notification of the disallowance.
 - f. An owner or operator may meet the requirements of this subsection by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of

the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor must meet the requirements of subdivisions a through e and a certified copy of the guarantee must accompany the items in subdivision b. The terms of the guarantee must provide that:

- (1) Guarantor will complete closure or postclosure care, whichever is applicable, if the owner or operator fails to do so; and
- (2) The corporate guarantee will remain in effect unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department; and
- (3) Guarantor will provide alternate financial assurance within ninety days if the corporate guarantee is canceled and if the owner or operator fails to provide approved alternate financial assurance.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-08. Release of the owner or operator from the requirements of this chapter.

1. Release of financial assurance for completion of closure. After receiving certification from the owner or operator and a qualified professional engineer that final closure has been completed in accordance with the approved closure plan and upon review and approval by the department, the department shall notify the owner or operator, in writing, that the owner or operator is no longer required by this chapter to maintain financial assurance for final closure of the facility. If the department has reason to believe that the final closure has not been in accordance with the approved closure plan, the department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.
2. Release of financial assurance for completion of postclosure care. After receiving certification from the owner or operator and a qualified professional engineer that postclosure care has been completed in accordance with the approved postclosure care plan and upon review and approval by the department, the department shall notify the owner or operator, in writing, that the owner or operator is no longer required by this chapter to maintain financial assurance for postclosure care of the facility. If the department has reason to believe that the postclosure care has not been in accordance with the approved postclosure care plan, the department shall provide the owner or operator a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure care plan.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-15

33.1-20-15-01. Application processing fee.

1. Applicants for permits for transporting solid waste and for solid waste management ~~facilities~~units shall pay, at the time the permit application is filed, an application processing fee as follows:
 - a. ~~Seventy-five~~Two hundred dollars for a solid waste transporter.
 - (1) ~~Solid waste transporter permits are effective for up to five years, expiring on June thirtieth of the fifth year.~~
 - (2) ~~Each solid waste transport vehicle must display decals issued by the department that show the solid waste transporter permit number and permit expiration date.~~
 - (3) ~~The application processing fee must include decals for one solid waste transport vehicle.~~
 - (4) ~~Decals for additional solid waste transport vehicles covered by the permit are available for purchase at the time of application or any later time during the permit period for a fee of twenty-five dollars per vehicle.~~
 - (5) ~~Additional decals may be purchased only for vehicles directly owned or operated by the permittee. Additional decals may not be purchased for vehicles owned or operated by a subcontractor working for the permittee. A solid waste transportation subcontractor shall apply for and obtain an individual solid waste transporter permit.~~
 - (6) ~~New vehicle decals are required after a permit expires regardless of when the decal was purchased during the permit period.~~
 - b. Five thousand dollars for any resource recovery system ~~or facility~~unit.
 - c. One thousand dollars for any municipal waste landfill ~~facility~~unit that receives on average less than twenty tons [18.2 metric tons] per day.
 - d. Three thousand dollars for any municipal waste landfill ~~facility~~unit that receives on average from twenty tons [18.2 metric tons] per day to fifty tons [45.4 metric tons] per day.
 - e. Five thousand dollars for any municipal waste landfill ~~facility~~unit that receives on average more than fifty tons [45.4 metric tons] per day to five hundred tons [453.5 metric tons] per day.
 - f. Twenty thousand dollars for any municipal waste landfill ~~facility~~unit that receives on average more than five hundred tons [453.5 metric tons] per day.
 - g. Three thousand dollars for any surface impoundment ~~facility plus two thousand dollars for each surface impoundment included in the facility~~unit. A surface impoundment receiving an average of more than ten tons [9.1 metric tons] of waste per day and which will be closed with the waste materials remaining in place shall pay applicable fees for the appropriate size of industrial waste or special waste landfill ~~facility~~unit.
 - h. One thousand dollars for any industrial waste or special waste landfill ~~facility~~unit that receives on average ten tons [9.1 metric tons] per day or less.

- i. Ten thousand dollars for any industrial waste or special waste **facility**unit that receives on average more than ten tons [9.1 metric tons] but less than one hundred tons [90.7 metric tons] per day.
 - j. Twenty thousand dollars for any industrial waste or special waste **facility**unit that receives on average one hundred tons [90.7 metric tons] or more per day.
 - k. Two thousand dollars for any inert waste landfill unit that receives on average more than forty tons [18.1 metric tons] per day.
2. Modifications of existing unexpired permits which are initiated by the department may not require an application processing fee. Modifications of existing unexpired permits not initiated by the department that require major review may be required to submit a processing fee with the modification request.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03, 23.1-08-10; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-10; S.L. 2017, ch. 199, § 23

33.1-20-15-02. Annual permit fee.

~~Beginning July 1, 1993, the~~The owners or operators of an activity or **facility**unit required to have a permit under these rules are subject to an annual permit fee for each permit. The fee period must begin each July first and the fee must be paid by July thirty-first. All fees must be made payable to the North Dakota department of environmental quality. The annual permit fee is as follows:

- ~~1.~~ ~~For transport of solid waste twenty five dollars.~~
- ~~2.1.~~ For a resource recovery system ~~or facility system~~unit five hundred dollars.
- ~~3.2.~~ For industrial waste or special waste **facility**unit five hundred dollars.
- ~~4.3.~~ For a municipal waste landfill **facility**unit receiving on average more than twenty tons [18.2 metric tons] per day but less than fifty tons [45.4 metric tons] per day five hundred dollars.
- ~~5.4.~~ For a municipal waste landfill **facility**unit receiving on average more than fifty tons [45.4 metric tons] per day and less than five hundred tons [453.5 metric tons] per day one thousand dollars.
- ~~6.5.~~ For a municipal waste landfill **facility**unit receiving on average more than five hundred tons [453.5 metric tons] per day five thousand dollars.
- ~~7.6.~~ For a surface impoundment **facility**unit five hundred dollars.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03, 23.1-08-10; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-10; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-16

33.1-20-16-01. Responsibility.

1. ~~Permittees of all municipal waste landfills and~~ municipal waste incinerators, municipal solid waste ash landfills, and special waste landfills which accept primarily oilfield special waste or TENORM waste in North Dakota are required to have at least one certified operator onsite at all times during operation of the facility.
2. Permittees of all industrial waste landfills and special waste landfills which accept primarily coal combustion residuals in North Dakota are required to have at least one certified operator whose primary work location is at the facility.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-15; S.L. 2017, ch. 199, § 23

33.1-20-16-02. Certification and application.

1. In order to be certified ~~as a municipal waste~~ landfill operator, an applicant must take and pass a written examination given by the department or its authorized representative.
2. The department shall charge certification fees of twenty-five dollars for initial certification and fifteen dollars for annual renewal.
3. An individual desiring to attend the training session and take the certification examination shall file and submit the fee and application form at least thirty days before the scheduled training and certification session.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-15; S.L. 2017, ch. 199, § 23

33.1-20-16-03. Training course and certification requirements.

1. To be eligible for certification, a landfill or incinerator operator must have a minimum of one year experience in operating ~~a municipal waste landfill~~ the type of landfill or incinerator that the operator wants to be certified for and attend a training session approved by the department for ~~municipal~~ solid waste facilities.
2. Training sessions will be held at least annually by the department to provide information on ~~municipal waste~~ landfill and incinerator operation and maintenance.
3. An applicant may submit documentation to demonstrate the equivalency of other training courses and certification successfully completed. The applicant may be eligible for certification without taking the training course or written examination if the department finds that the training and certification are substantially equivalent.
4. Applicants who fail an examination may reapply to the department.
5. Upon passage of the examination with a score of seventy percent or better, the department will issue a certificate to the applicant.
6. The certificates of personnel who terminate their employment at a landfill or incinerator facility will remain valid until expiration.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-15; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-17
DISTRICT SOLID WASTE MANAGEMENT PLANS PLANNING

Section

33.1-20-17-01 ~~District~~ Solid Waste Management Plans

33.1-20-17-01. ~~District solid~~ Solid waste management plans.

The department may require any person or political subdivision within the state to submit for review and approval a solid waste management plan to show that solid wastes will be disposed of in accordance with the provisions of North Dakota Century Code chapter 23.1-08 and this article.

1. The comprehensive solid waste management plan required by North Dakota Century Code chapter ~~23-29 for each solid waste management district~~ 23.1-08 must be developed and implemented for the following purposes:
 - a. Reduce the amount of solid waste generated.
 - b. Reuse materials.
 - c. Composting leaves and grass clippings.
 - d. Recycle everything possible.
 - e. Recover energy from waste.
 - f. Landfill the remaining wastes.
 - g. ~~To coordinate~~ Coordinate solid waste management among ~~district~~ political subdivisions.
2. At a minimum, each ~~district~~ solid waste management plan ~~must~~ should contain the following plan elements:
 - a. ~~Documentation demonstrating compliance with North Dakota Century Code chapter 23-29 for formation of the district.~~
 - ~~b.~~ Solid waste management goals and objectives for ten-year plan.
 - ~~e.~~ b. Solid waste inventory (including special wastes, regulated infectious wastes and tires excluding regulated hazardous wastes), types, and quantities for each community and county; and a district summary.
 - ~~d.~~ c. Solid waste amounts and types transported to another district or state; and the amounts, types, and sources of waste received from another district or state.
 - ~~e.~~ d. Descriptions of existing solid waste collectors, service areas, routes, transfer stations, and types of service for all communities and counties served.
 - ~~f.~~ e. Descriptions of existing resource recovery, waste processing, and disposal methods and facilities, existing waste minimization practices, and local markets for recoverable waste materials; assessments of the capacities of these methods, practices, and markets; and identification of potential and new resource recovery efforts and markets.
 - ~~g.~~ f. Identification of current solid waste management problems, evaluate solutions, and identify a course of action to solve those problems.
 - ~~h.~~ g. Methods, procedures, or programs adequate to ~~meet the following goals specified in North Dakota Century Code section 23-29-02:~~

- ~~(1) At least a ten percent reduction in volume of municipal waste deposited in landfills by 1995.~~
- ~~(2) At least a twenty percent reduction in volume of municipal waste deposited in landfills by 1997.~~
- ~~(3) At least a forty percent reduction in volume of municipal waste deposited in landfills by 2000~~reduce the volume of solid waste deposited in landfills.

i.h. Future solid waste management issues which may require adjustments to adopted solid waste management plans.

j.i. Implementation plan and schedule and a funding mechanism for the activities and strategies in the plan.

k.j. Existing local ordinances and rules and a strategy for the ~~district's~~political subdivision's compliance with the plan.

l.k. Ensure and document public involvement and acceptance of the plan.

m.l. Resolution of adoption of the plan by the ~~district~~political subdivision.

n.m. Provision to review, amend, update, and submit solid waste management plans to the department every five years.

~~3. As required by North Dakota Century Code section 23-29-06, the districts must submit plans to the department for approval.~~

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC ~~23-29-04~~23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC ~~23-29-04, 23-29-06~~23.1-08-03; S.L. 2017, ch. 199, § 23

ARTICLE 33.1-23
DIVISION OF CHEMISTRY LABORATORIES

Chapter

33.1-23-01	Fees for Chemistry Laboratories Analyses
33.1-23-02	Environmental Laboratory Certification Program
33.1-23-03	Environmental Laboratory Certification Proficiency Testing
33.1-23-04	Environmental Laboratory Certification Fee Determination

CHAPTER 33.1-23-02
ENVIRONMENTAL LABORATORY CERTIFICATION PROGRAM

Section

33.1-23-02-01	Applicability and Scope
33.1-23-02-02	Definitions
33.1-23-02-03	General Requirements for Required Methods
33.1-23-02-04	Biosolids Program Methods
33.1-23-02-05	Clean Water Act Program Methods
33.1-23-02-06	Coal Combustion Residuals Rule Program Methods
33.1-23-02-07	Nonpotable Water Program Methods
33.1-23-02-08	Potable Water Program Methods
33.1-23-02-09	Resource Conservation and Recovery Act Program Methods
33.1-23-02-10	Safe Drinking Water Act Program Methods
33.1-23-02-11	Alternate Methods
33.1-23-02-12	Solids and Chemicals Program Methods
33.1-23-02-13	Personnel and Contact Information
33.1-23-02-14	Quality System
33.1-23-02-15	Access to Premises
33.1-23-02-16	Access to Records
33.1-23-02-17	Subcontracting
33.1-23-02-18	Certification Status
33.1-23-02-19	Response
33.1-23-02-20	Application Contents for Primary Certification
33.1-23-02-21	Application Period
33.1-23-02-22	Certification Renewal
33.1-23-02-23	Modified Application
33.1-23-02-24	Conditions for Reapplication
33.1-23-02-25	Term of Primary Certification
33.1-23-02-26	Limit of Certification
33.1-23-02-27	Term of Reciprocal Certification and Application Contents
33.1-23-02-28	Department Notification - Voluntary Withdrawal or Discontinuation of Certification
33.1-23-02-29	Client Notification Required
33.1-23-02-30	Recertification
33.1-23-02-31	Certification Modification, Suspension, Revocation, or Denial

33.1-23-02-01. Applicability and scope.

This chapter applies to all laboratories required to be certified under North Dakota Century Code section 23.1-01-14. A laboratory that performs tests and analyses, the results of which must be reported to the department to meet permit conditions or other department program or regulatory requirements, must be certified for the parameters and methods required by the permit or department program, unless the permit or department program specifically exempts the parameters or methods from certification requirements. Certification requirements are equal to those required by federal

programs for regulated parameters by promulgated methods unless otherwise specified or required by a department program.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-02. Definitions.

In this article, unless the context otherwise requires, the following definitions apply:

1. "Analyte" means the chemical substance, physical property, or organism determined in a sample.
2. "Analyte group" means a set of analytes that can be determined using the same method or technology.
3. "Biosolids" means sewage sludge or a solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Biosolids includes domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.
4. "Certified laboratory" means a laboratory that has a valid certification issued by the department.
5. "Client" means an entity that has arranged with a laboratory to perform tests and analyses to meet the requirements of a department issued permit or another department program or regulatory requirement.
6. "Coal Combustion Residual Rule" means the sampling and analysis requirements under title 40 Code of Federal Regulations, part 257 and appendices III and IV to part 257.
7. "Department" means the North Dakota department of environmental quality.
8. "Department program" means a program or rule administered by the department which requires submission of data for compliance reporting purposes that must come from a certified laboratory.
9. "Field of testing" means the combination of analyte, method, matrix, and program for which a laboratory may hold accreditation or certification.
10. "Initial application" means an application submitted by a laboratory that either has never had certification or has not met the requirements and qualifications for either a renewal or revised application.
11. "Laboratory" means a facility that performs analyses on potable water, nonpotable water, a hazardous liquid, or solid matrix.
12. "Manual for the Certification of Laboratories Analyzing Drinking Water" means the environmental protection agency publication "Manual for the Certification of Laboratories Analyzing Drinking Water", 5th edition and including supplement 1 to the 5th edition of the "Manual for the Certification of Laboratories Analyzing Drinking Water" and supplement 2 to the 5th edition of the "Manual for the Certification of Laboratories Analyzing Drinking Water".
13. "Method" means an environmental protection agency promulgated or environmental protection agency accepted published scientific technique for performing a specific measurement.

Method includes instructions for sample preparation, sample preservation, and sample analysis.

14. "Method defined parameter" means parameters that are physical or chemical properties of materials determined with specific methods used to evaluate whether the materials comply with certain Resource Conservation and Recovery Act of 1976, 42 U.S.C. section 6901 et seq., subtitle C regulations.

15. "National Primary Drinking Water Regulations" means the federal program authorized under title 40 Code of Federal Regulations, part 141, section 141.1 et seq.

16. "National pollutant discharge elimination system" means the federal program authorized under title 40 Code of Federal Regulations, part 136, section 136.1 et seq.

17. "Nonpotable water" means water not suitable for drinking. It is a matrix in the Clean Water Act Program, the Resource Conservation and Recovery Act program and the Coal Combustion Residuals Rule program.

18. "North Dakota Environmental Laboratory Certification Program Manual" means the manual used by the environmental laboratory certification program for chemistry parameters. It is available on the department's website and is the Rev. November 2019 edition.

19. "Parameter" means the chemical substance, physical property, or organism being determined.

20. "Point value" means the numerical increments which represent the amount necessary to cover costs of reviewing applications, issuing certifications, conducting laboratory evaluations, training, collecting fees, and providing compliance assistance and other anticipated costs of administering the environmental laboratory certification program.

21. "Potable water" means water suitable for drinking. It is the matrix in the Safe Drinking Water Act program.

22. "Proficiency test" means the process of testing and reporting of test results performed by a laboratory for a specific analyte or analyte group to determine the ability of a laboratory to employ applicable analytical methods and to produce an accurate measurement of the concentration of the analyte or analyte group in the sample.

23. "Reciprocal certification" means a reciprocal or secondary certification that is based on a primary certification.

24. "Renewal application" means an application submitted by a laboratory to renew an existing certification.

25. "Reporting limit" means the lowest level of an analyte that can be accurately recovered from the matrix of interest. This limit is equivalent to a level of quantitation.

26. "Resource Conservation and Recovery Act" means the federal law found under 42 U.S.C. section 6901 et seq. (1976) and its corresponding regulations found under title 40, Code of Federal Regulations, parts 239 through 282.

27. "Revised application" means an application that is submitted to make changes to an existing certification.

28. "SW-846" means the environmental protection agency guidance for using the "Test Methods for Evaluation Solid Waste: Physical/Chemical Methods", Publication SW-846, United States environmental protection department (2019). This guidance consists of three main parts:

chapters, methods, and supporting documents and is the environmental protection agency SW-846 compendium.

29. "Test methods for evaluating solid waste: physical/chemical methods" means the environmental protection agency publication also known as SW-846.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-03. General requirements for required methods.

The analytical methods, sample collection, and preservation procedures used to analyze samples for programs required by a federal agency must meet the requirements specified in the relevant parts of the Code of Federal Regulations as stated herein. The laboratory's analytical methods, sample collection, and preservation procedures also must meet the requirements specified by the department program. Certification requirements are based on the analysis of regulated parameters by promulgated methods unless otherwise specified or required by a department program.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-04. Biosolids program methods.

For analysis of sewage sludge samples required by state and federal rules, laboratories shall use the methods and test procedures in title 40, Code of Federal Regulations, part 503, and publication SW-846.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-05. Clean Water Act program methods.

For analysis of water or wastewater samples required by state and federal clean water rules, laboratories shall use the methods and test procedures in title 40, Code of Federal Regulations, part 136.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-06. Coal Combustion Residuals Rule program methods.

For analysis of water or wastewater samples required by state and federal coal combustion residuals in landfills and surface impoundments rules and regulations as amended, laboratories shall use methods appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. Metals analysis must be for "total recoverable" concentrations. Parameters are found at appendix III to part 257 and appendix IV to part 257.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-07. Nonpotable water program methods.

For analysis of water or wastewater samples as requested by the department or to support studies of specific industries or for use in broad national surveys, laboratories shall use validated methods and test procedures. Environmental protection agency methods are preferred but other state approved and validated methods may be acceptable.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-08. Potable water program methods.

For analysis of suitable drinking water samples as requested by the department or to support studies of specific industries or for use in broad national surveys, laboratories shall use validated methods and test procedures. Environmental protection agency methods are preferred, but other state approved and validated methods may be acceptable.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-09. Resource Conservation and Recovery Act program methods.

For analysis of wastewater, waste, and solid and hazardous waste samples, laboratories shall use the methods and test procedures found in the SW-846 or as deemed by the division of waste management within the department. Modifications may be used with the approval of the department or accrediting body except for method-defined parameters. Method-defined parameters can only be determined by the methods prescribed in Resource Conservation and Recovery Act of 1976 regulations because the methods are part of the regulations. These methods must be followed exactly as written, or the resulting data cannot be used to ensure regulatory compliance. A list of method-defined parameters found under title 40 Code of Federal Regulations, part 260, section 260.11.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-10. Safe Drinking Water Act program methods.

For analysis of drinking water samples required by state and federal Safe Drinking Water Act rules, laboratories shall use the methods and test procedures in title 40 Code of Federal Regulations, part 141. Laboratories also shall comply with the "Manual for the Certification of Laboratories Analyzing Drinking Water" requirements.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-11. Alternate methods.

Provisions for the use of alternate methods to be used in the Safe Drinking Water Act program and the Clean Water Act program are found within the corresponding federal laws and regulations. A laboratory may request approval for alternate methods by following the instructions provided in the appropriate sections of the federal laws and regulations for the Clean Water Act program and the Safe Drinking Water Act program.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-12. Solids and chemicals program methods.

For analysis of solids and chemical samples as requested by the department or to support studies of specific industries or for use in broad national surveys, laboratories shall use validated methods and test procedures. Environmental protection agency methods are preferred but other state approved and validated methods may be acceptable.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-13. Personnel and contact information.

A laboratory shall have adequate staff with the education, training, or experience to meet the requirements of certification. At least one staff person must be identified as the laboratory administrator and that person's contact information must be provided with the certification application. The laboratory administrator shall notify the department when there are changes in contact information for the laboratory administrator, change of address, owner, or legally responsible party no later than thirty days after the change occurs.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-14. Quality system.

The laboratory shall have a quality assurance and quality control program that meets the criteria specified in the "North Dakota Environmental Laboratory Certification Program Manual" that includes:

1. A quality assurance manual or plan;
2. Standard operating procedures; and
3. Traceability, documentation, recordkeeping, and reporting.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-15. Access to premises.

The laboratory shall allow the department and its agents reasonable access to the laboratory for inspection and evaluation purposes and shall produce such information and records as the department requests to determine compliance with this article.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-16. Access to records.

The laboratory shall maintain all records used to demonstrate the laboratory's compliance with certification requirements. If a laboratory analyzes samples from a client, then upon request, the laboratory shall provide to the client the records that support the client's test results. The laboratory also shall make records available to the department upon its request.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-17. Subcontracting.

A laboratory that has samples analyzed by another laboratory shall use laboratories that have valid department certification if the data is to be reported to the department.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-18. Certification status.

1. A laboratory may not alter or misrepresent its certification status and attending documents issued by the department in any brochures, promotional literature, or advertising materials. A laboratory may not describe its certification status in a manner that implies certification in areas that are outside the actual scope of certification. General statements, such as "A North Dakota Certified Laboratory" or "Certified in North Dakota" are not specific enough and can be misleading. The department may require appropriate corrective action, including publication of a retraction of the misleading information.
2. A laboratory may not represent analytical results as certified after its certification has expired or been discontinued, suspended, or revoked.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-19. Response.

A laboratory shall timely respond in writing to any written communication from the department.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-20. Application contents for primary certification.

1. A laboratory shall submit an initial application if:
 - a. It has never received primary or reciprocal certification under this article;
 - b. It has had its primary certification or department reciprocal certification revoked in total;
 - c. Its certification has expired for more than one year; or
 - d. It has submitted an application that has remained incomplete for more than one year.
2. To apply for initial or renewal of certification, a laboratory shall submit an application on forms provided by the department. The required information includes:
 - a. Identifying information;
 - b. At least one field of testing for which the laboratory seeks certification;
 - c. The laboratory's most recent quality assurance manual or plan meeting the standards of the "North Dakota Environmental Laboratory Certification Program Manual";

- d. The laboratory's most recent standard operating procedures for each field of testing that meets the standards of the "Environmental Laboratory Certification Program Manual";
 - e. If the application is an initial request for certification, the most recent proficiency test result for each field of testing for which the laboratory is requesting certification. The proficiency test must have been completed no more than twelve months prior to the date that the renewal application is received by the department, no more than six months prior to the date the initial application is received and must meet the proficiency test requirements;
 - f. A list of the laboratory's detection limits and reporting limits for each field of testing for which the laboratory is requesting certification; and
 - g. Any other additional information requested by the department as necessary to determine compliance in this article.
3. The owner of laboratory facilities with multiple locations shall submit a separate application for each laboratory location.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-21. Application period.

Initial applications and revised applications may be submitted to the department at any time.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-22. Certification renewal.

When a laboratory's certification has expired, the laboratory shall apply for a renewed certification.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-23. Modified application.

A laboratory with a valid certification shall submit a modified application, including the information required for primary certifications or reciprocal certifications, to the department to:

1. Add a program for which the laboratory does not currently have certification;
2. Add a test method in a program for which the laboratory is already certified;
3. Add a parameter or analyte to a test method for which the laboratory is already certified; or
4. To change the name of the certified laboratory on the certification documents.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-24. Conditions for reapplication.

A laboratory notified of or involved in a corrective action or with a suspended certification is not eligible to apply for a certification renewal for the affected field of testing until the laboratory receives confirmation from the department that the corrective action is complete, or the laboratory has been reinstated after suspension. If the department revoked the laboratory's certification, the laboratory shall apply for initial certification, in accordance with this article, as if it were a new laboratory.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-25. Term of primary certification.

1. Primary certification is granted following the procedure as outlined in the "North Dakota Environmental Laboratory Certification Program Manual".
2. Certification becomes effective the date of issuance and is valid for three years unless suspended, revoked, or voluntarily discontinued. Any request for an extension must be in writing. The certification period may be extended at the discretion of the department.
3. Standards of quality in the "Manual for Laboratories Analyzing Drinking Water" must be met in order to qualify for certification.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-26. Limit of certification.

Certification of a laboratory is not an endorsement by the department of the quality or validity of the data generated by a laboratory. Certification does not guarantee the usability of data generated by a laboratory for an intended purpose. The users of laboratory results are responsible for determining whether to accept or reject analytical data from a certified laboratory.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-27. Term of reciprocal certification and application contests.

1. Reciprocal certification is granted following the procedure as outlined in the "North Dakota Environmental Laboratory Certification Program Manual".
2. A laboratory holding a primary accreditation or certification from another accrediting body may apply for reciprocal certification in North Dakota.
3. The department may approve other certifying authorities of federal agencies and agencies of other states for reciprocal recognition of laboratory certification programs or portions of programs that are substantially equivalent.
4. A certification program is considered substantially equivalent if a review of the certification authority's rules are substantially equivalent to the rules and guidelines of the department's laboratory certification program and including:
 - a. Inspections of certified laboratories are performed at intervals not exceeding three years;

b. The certifying authority requires an acceptable corrective action response associated with enforcement action, suspension, or revocation from the laboratory; and

c. The certifying authority is the primary authority for necessary enforcement actions, such as suspension or revocation of the laboratory's certification.

5. The department may give reciprocal certification for a laboratory that:

a. Submits an application meeting the certification requirements of section 33.1-23-02-23;

b. Submits the appropriate fees with its application;

c. Provides a copy of current certification documents, including certificate, letter, and list of certified parameters, from the primary certifying state or private or federal authority; and

d. Provides a copy of the primary certifying authority's most recent audit report and including any corrective action that was taken.

6. A laboratory certified under this section shall notify the department within thirty days after any enforcement action is taken by the reciprocal certifying authority.

7. Laboratories certified under reciprocity agreements are subject to this article unless specifically stated as a unique requirement for primary certification.

8. Certification becomes effective the date of issuance and is valid for up to three hundred sixty-five days unless suspended, revoked, or voluntarily discontinued. The certification period may be extended for good cause as determined by the department. The certification period on the North Dakota certificate shall not exceed the certification period on the primary certificate.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-28. Department notification - Voluntary withdrawal or discontinuation of certification.

1. If a laboratory chooses to withdraw its application for certification or discontinue its current certification, in total or in part, the laboratory shall notify the department in writing and specify the effective date of withdrawal or discontinuation and the field of testing for which certification is being withdrawn or discontinued. The laboratory shall submit notification at least thirty days before the effective date of withdrawal or discontinuation.

2. After the effective date of voluntary withdrawal or discontinuation of certification, the laboratory may not provide analytical results for compliance reporting or any department program for the field of testing for which certification has been withdrawn or discontinued.

3. A laboratory shall apply for revised reciprocal certification within thirty days of the issuance of a primary revised certification.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-29. Client notification required.

1. When the laboratory is discontinuing certification voluntarily, at least thirty days before the effective date of the laboratory's discontinuation of certification, the laboratory shall notify clients and affected regulatory agencies in writing of the discontinuation date and which fields

of testing will be affected. The laboratory shall submit a copy of each client notification to the department at the same time the notification is sent under section 33.1-23-02-40.

2. The laboratory shall notify clients immediately if:

a. The primary certification authority downgrades the status for a parameter or field of testing to "not certified"; or

b. Certification is revoked, suspended, or terminated by the primary certification authority.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-30. Recertification.

To be recertified after voluntary withdrawal or discontinuation of certification, a laboratory shall submit an application meeting the requirements for:

1. A revised application, if reapplying within one year of the date that certification was discontinued; or

2. An initial application, if certification has been discontinued for more than one year.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-02-31. Certification modification, suspension, revocation, or denial.

The department may modify, suspend, revoke, or deny a certification for reasons pertaining to: circumstances that do not meet the purpose and provisions of this article, the provisions of the certification, or the materials submitted as part of the application for certification; or, violations of any applicable laws or rules. The department shall provide written notice to the laboratory specifying the basis for the modification, suspension, revocation, or denial. The laboratory may request a hearing in accordance with North Dakota Century Code chapter 28-32 on the issue of modification, suspension, revocation, or denial of the laboratory's certification. The laboratory's hearing request must be made in writing and received by the department within thirty days after the laboratory's receipt of the notice.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

CHAPTER 33.1-23-03
ENVIRONMENTAL LABORATORY CERTIFICATION PROFICIENCY TESTING

Section

- 33.1-23-03-01 Proficiency Testing Requirements
- 33.1-23-03-02 Laboratory Testing of Proficiency Test Study Samples
- 33.1-23-03-03 Reporting Results
- 33.1-23-03-04 Restrictions on Exchanging Information
- 33.1-23-03-05 Evaluation of Results
- 33.1-23-03-06 Repeat Proficiency Tests

33.1-23-03-01. Proficiency testing requirements.

1. A laboratory shall complete at least one proficiency test successfully for each field of testing for which it applies for certification. The laboratory must complete the proficiency test no more than six months prior to submitting the application. If no proficiency test sample is available for an analyte, the laboratory is exempt from the requirements of this section only for that analyte.
2. Proficiency tests results must be included with the initial or revised certification application required for a primary certification or for reciprocal certification. Proficiency test results also may be reported to the department by the proficiency test provider upon completion of the study.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-03-02. Laboratory testing of proficiency test study samples.

To ensure valid proficiency test results, the laboratory shall:

1. Obtain all proficiency test study samples as unknowns from a nationally recognized accreditation program approved vendor;
2. Manage, analyze, report, and otherwise handle all proficiency test samples in the same manner as routine samples, including the same staff, procedures, equipment, and facilities used for routine analysis for the field of testing;
3. Employ the same calibration, quality control, acceptance criteria, sequence of analytical steps, number of replicates, and other standard operating procedures for proficiency test samples as used when analyzing routine samples; and
4. Follow sample preparation steps for the proficiency test sample as instructed by the proficiency test sample provider.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-03-03. Reporting results.

1. A laboratory shall submit the results of all proficiency tests to the department no later than thirty days after the laboratory receives the results from the proficiency test sample provider.
2. A laboratory conducting proficiency testing as part of an initial or revised application shall submit the results of proficiency tests as part of the application.

3. A laboratory either shall provide a copy of the original results to the department or authorize the proficiency test sample provider to provide all results directly to the department.
4. Proficiency test samples analyzed or reported to the proficiency test sample provider after the provider's study closing date are not valid for compliance with the proficiency testing requirements under this section.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-03-04. Restrictions on exchanging information.

Prior to the time the results of the proficiency test are submitted to the proficiency test sample provider, a laboratory may not:

1. Communicate proficiency test results to another laboratory, including intercompany communication; or
2. Attempt to obtain the assigned value of any proficiency test sample from a proficiency test sample provider or another laboratory.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-03-05. Evaluation on results.

1. A laboratory must demonstrate passing performance to the department, as determined by the proficiency test sample provider, for each parameter and method or field of testing reported.
2. A laboratory may use one proficiency test sample for multiple methods.
3. A laboratory may not request a revised report from the proficiency test sample provider when the requested revisions are the result of error on the part of the laboratory.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-03-06. Repeat proficiency tests.

1. A laboratory with primary certification may repeat proficiency tests after obtaining unacceptable results as follows:
 - a. If the first proficiency test result is unacceptable, the laboratory shall resolve the suspected cause, document the corrective action, and complete a second proficiency test within thirty days of receiving the unacceptable result;
 - b. If the second proficiency test result is unacceptable, the laboratory shall:
 - (1) Resolve the suspected cause and submit a corrective action report to the department within thirty days of receiving the second unacceptable result; and
 - (2) Order and complete a third proficiency test within thirty days of receiving the unacceptable result of the second proficiency test;

c. If the third proficiency test result is unacceptable, the laboratory may not provide analytical results for compliance reporting or any department program for the field of testing for which the laboratory failed to demonstrate acceptable proficiency test results. The laboratory may resume providing analytical results when the laboratory passes two consecutive proficiency tests conducted at least fifteen days apart. The laboratory shall submit a corrective action report to the department within thirty days of passing the second of the two proficiency tests.

2. The "North Dakota Environmental Laboratory Certification Program Manual" governs when a portion of a multiple analyte group proficiency test is unacceptable.

3. The department may request additional information necessary to validate sample results generated during the testing period covered under this section.

4. A laboratory with reciprocal certification must follow the repeat proficiency test guidelines established by its primary certification agency.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

CHAPTER 33.1-23-04
ENVIRONMENTAL LABORATORY CERTIFICATION FEE DETERMINATION

Section

- 33.1-23-04-01 Method
- 33.1-23-04-02 Computation of Cost per Point Value
- 33.1-23-04-03 Payment of Fees
- 33.1-23-04-04 Initial or Renewed Application Points
- 33.1-23-04-05 Revised Application Points

33.1-23-04-01. Method.

1. Certification fees for primary initial, renewed, or revised application are based on matrix, type, and complexity of analytical methods that a laboratory is certified to perform.
2. Certification fees for reciprocal initial, renewed, or revised applications are based on the number of fields of testing on a certificate.
3. Each fee item is assigned a point value. The cost per point value determined is multiplied by the total number of points for each application. Total applicable fees are computed by the following equation:

$$X = (Y)(Z)$$

Where:

X = total fees applied to the certification application invoice

Y = cost assigned to the point value in section 33.1-23-04-02

Z = sum of point values as determined for initial, renewed, or revised applications.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-04-02. Computation of cost per point value.

1. The department computes the cost per point value based upon the salaries, wages, benefits, and operating expenses.
2. The point value can be found on the department's website.
3. The cost associated with the point value 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.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-04-03. Payment of fees.

1. A laboratory shall pay the fees required in this article within thirty days of receiving the department's invoice.
2. Certification of a laboratory may not be awarded until all fees are paid.
3. Fees are nonrefundable once an invoice has been issued.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-04-04. Initial or renewed application points.

1. The points assessed for certification application or category types designated in this section are multiplied by the cost per point value determined to calculate the appropriate fee.

<u>2. Application or Category Type for Primary Certifications</u>	<u>Point Value</u>
a. <u>Initial application</u>	<u>6</u>
b. <u>Renewed application</u>	<u>3</u>
c. <u>Matrix fee, aqueous</u>	<u>5</u>
d. <u>Matrix fee, solid</u>	<u>5</u>
e. <u>Matrix fee, drinking water</u>	<u>5</u>
f. <u>Electrometric assays (ion-selective electrodes)</u>	<u>1</u>
g. <u>Gravimetric assays, residues (solids)</u>	<u>1</u>
h. <u>Gravimetric assays, oil and grease (HEM)</u>	<u>2</u>
i. <u>Titrimetric or potentiometric titration assays</u>	<u>1</u>
j. <u>Colorimetric or nephelometric spectrophotometry</u>	<u>2</u>
k. <u>Combustion or oxidation</u>	<u>3</u>
l. <u>IC (ion chromatography)</u>	<u>3</u>
m. <u>Flow injection - Gas diffusion - Amperometry</u>	<u>5</u>
n. <u>Waste characteristic extractions</u>	<u>2</u>
o. <u>Waste characterization assays</u>	<u>2</u>
p. <u>FLAA (flame atomic absorption spectrometry)</u>	<u>2</u>
q. <u>CVAA (cold vapor atomic absorption)</u>	<u>3</u>
r. <u>Hydride AA (gaseous hydride spectrometry)</u>	<u>3</u>
s. <u>CVAFS (cold vapor atomic fluorescence spectrometry)</u>	<u>3</u>
t. <u>TDAA (thermal decomposition atomic absorption spectrometry)</u>	<u>3</u>
u. <u>GFAA (graphite furnace atomic absorption spectrometry)</u>	<u>3</u>
v. <u>Ultra-low level metals assays</u>	<u>3</u>
w. <u>ICP (inductively coupled plasma emission spectrometry)</u>	<u>4</u>
x. <u>ICP/MS (inductively coupled plasma-mass spectrometry)</u>	<u>5</u>

y.	<u>GC (gas chromatography)</u>	<u>3</u>
z.	<u>GC/MS (gas chromatography-mass spectrometry)</u>	<u>4</u>
aa.	<u>HPLC (high performance liquid chromatography)</u>	<u>3</u>
bb.	<u>LC/MS (liquid chromatography-mass spectrometry)</u>	<u>4</u>
cc.	<u>HR-GC/MS (high resolution GC - mass spectrometry)</u>	<u>10</u>
dd.	<u>LC/MS/MS (liquid chromatography - mass spectrometry - mass spectrometry)</u>	<u>10</u>
ee.	<u>WET (whole effluent toxicity assays)</u>	<u>5</u>
ff.	<u>Other</u>	<u>Contact department</u>

3.	<u>Application or Category Type for Reciprocal Certification</u>	<u>Point Value</u>
a.	<u>Initial and renewed application</u>	<u>10</u>
b.	<u>Level 1: 0-200 parameters</u>	<u>2</u>
c.	<u>Level 2: 201-500 parameters</u>	<u>5</u>
d.	<u>Level 3: 500-1000 parameters</u>	<u>10</u>
e.	<u>Level 4: 1000-2000 parameters</u>	<u>20</u>

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

33.1-23-04-05. Revised application points.

1. Fees for laboratories with primary certification and applying for a revised application to add a new test category to the laboratory's certification are computed by the following equation:

$$X = Y + Z$$

Where:

X = total fees

Y = any incurred costs for an onsite audit to review new instrumentation or technology

Z = fees associated with the point value of the new test category as outlined in the initial or renewed application points section

2. Laboratories with primary certification and applying for a revised application to add or drop parameters under a method whereby the laboratory is already certified will be charged 1 point value to update the certificate and list of certified parameters.

3. Laboratories with reciprocal certification and applying for a revised application shall pay the following:

a. Fees equal to 1 point value when using the same primary certificate number as used for the initial or renewed application.

b. When using a primary certificate number other than the one used for the initial or renewed application, fees are computed according to the following equation:

$$\underline{X = Y + Z}$$

Where:

X = total fees

Y = fees associated with 1 point value

Z = fees associated with the level as described in the initial or renewed application points section.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-01-14

Law Implemented: NDCC 23.1-01-14

CHAPTER 33.1-24-01

33.1-24-01-04. Definitions.

As used in this article the following words have the meaning ascribed to them unless otherwise made inappropriate by use and context:

1. "Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.
2. "Act" means North Dakota Century Code chapter 23.1-04.
3. "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the department receives certification of final closure.
4. "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of the Act and which is not a closed portion. (See also "closed portion" and "inactive portion".)
5. "Acute hazardous waste" means hazardous wastes that meet the listing criteria in subdivision b of subsection 1 of section 33.1-24-02-09 and therefore are listed in section 33.1-24-02-16 with the assigned hazard code (H) or are listed in subsection 5 of section 33.1-24-02-18.
6. "Administrator" or "regional administrator" means the administrator or regional administrator of the environmental protection agency, or that officer's designee.
- ~~6.7.~~ "AES filing compliance date" means the date that environmental protection agency announces in the federal register on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file environmental protection agency information in the automated export system or its successor system, under the international trade data system platform.
8. "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.
9. "Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under subsection 10 of section 33.1-24-02-04 of this chapter, and accumulates the waste for more than ten days.
10. "Airbag waste handler" means any person, by site, who generates airbag waste that is subject to hazardous waste regulations.
11. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tank or tanks, between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal offsite.
- ~~7.12.~~ "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.
- ~~8.13.~~ "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (for example, part of a facility), for example, the plant manager, superintendent, or person of equivalent responsibility.

- | ~~9.14.~~ "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.
- | ~~10.15.~~ "Boiler" means an enclosed device using controlled flame combustion and:
- a. Boilers must have the following characteristics:
 - (1) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
 - (2) The unit's combustion chamber and primary energy recovery section or sections must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section or sections (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section or sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design--process heaters (units that transfer energy directly to processed steam) and fluidized bed combustion units;
 - (3) While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
 - (4) The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit should be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or
 - b. The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards of section 33.1-24-01-11.
- | ~~11.16.~~ "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (for example, power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.
- | ~~12.17.~~ "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.
- | ~~13.18.~~ "Cathode ray tube" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact cathode ray tube means a cathode ray tube whose vacuum has not been released. A used, broken cathode ray tube means glass removed from its housing or casing whose vacuum has been released.
- | ~~14.19.~~ "Cathode ray tube collector" means a person who receives used, intact cathode ray tubes for recycling, repair, resale, or donation.

- ~~15.20.~~ "Cathode ray tube exporter" means any person in the United States who initiates a transaction to send used cathode ray tubes outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.
- ~~16.21.~~ "Cathode ray tube glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture cathode ray tube glass.
- ~~17.22.~~ "Cathode ray tube processing" means conducting all of the following activities:
- a. Receiving broken or intact cathode ray tubes;
 - b. Intentionally breaking intact cathode ray tubes or further breaking or separating broken cathode ray tubes; and
 - c. Sorting or otherwise managing glass removed from cathode ray tube monitors.
- ~~18.23.~~ "Central accumulation area" means any onsite hazardous waste accumulation area with hazardous waste accumulating in units subject to sections 33.1-24-03-28 (for small quantity generators) or 33.1-24-03-29 (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to operate under sections 33.1-24-03-60 through 33.1-24-03-77 is also subject to section 33.1-24-03-72 when accumulating unwanted material or hazardous waste or both.
- ~~24.~~ "Certification" means a statement of professional opinion based on knowledge and belief.
- ~~19.25.~~ "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)
- ~~20.26.~~ "Component" means:
- a. Either the tank or ancillary equipment of a tank system; or
 - b. Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (for example, a pump seal, pump, kiln liner, or kiln thermocouple).
- ~~21.~~ ~~"Conditionally exempt small quantity generator" means a generator who generates no more than one hundred kilograms of hazardous waste in a calendar month.~~
- ~~22.27.~~ "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.
- ~~23.28.~~ "Constituent" or "hazardous waste constituent" means a constituent that caused the department to list the hazardous waste in chapter 33.1-24-02, or a constituent listed in Table 1 of section 33.1-24-02-14.
- ~~24.29.~~ "Contained" means held in a unit (including a land-based unit as defined in this section) that meets the following criteria:
- a. The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

- b. The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
- c. The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
- d. Hazardous secondary materials in units that meet the applicable requirements of sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819, or subsection 5 of section 33.1-24-06-16.

~~25-30.~~ "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

~~26-31.~~ "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of sections 33.1-24-05-475 through 33.1-24-05-479 and subpart DD of 40 CFR 265.

~~27-32.~~ "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

~~28-33.~~ "Corrosion expert" means a person who, by reason of the person's knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the national association of corrosion engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

~~29-34.~~ "Department" means the department of environmental quality.

~~30-35.~~ a. "Designated facility" means a hazardous waste treatment, storage, or disposal facility that:

- (1) Has received a permit (or interim status) in accordance with the requirements of chapters 33.1-24-06 and 33.1-24-07;
- (2) Has received a permit (or interim status) from a state authorized in accordance with 40 CFR part 271; or
- (3) Is regulated under subdivision b of subsection 3 of section 33.1-24-02-06 or sections 33.1-24-05-230 through 33.1-24-05-234; and
- (4) Has been designated on the manifest by the generator pursuant to section 33.1-24-03-04.

b. Designated facility also means a generator site designated on the manifest to receive the generator's waste as a return shipment from a facility that has rejected the waste in accordance with subsection 6 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16.

c. If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

- ~~34.36.~~ "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in subsections 1 and 3 of section 33.1-24-05-713. A facility at which a particular category of universal waste is only accumulated is not a destination facility for the purposes of managing that category of universal waste.
- ~~32.37.~~ "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.
- ~~33.38.~~ "Dioxins and furans" means tetra-chlorinated, penta-chlorinated, hexa-chlorinated, hepta-chlorinated, and octa-chlorinated dibenzo dioxins and furans.
- ~~34.39.~~ "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.
- ~~35.40.~~ "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water including ground water.
- ~~36.41.~~ "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which wastes will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.
- ~~37.42.~~ "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kickback or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.
- ~~38.43.~~ "Electronic import-export reporting compliance date" means the date that the environmental protection agency announces in the federal register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to the environmental protection agency using the environmental protection agency's waste import export tracking system, or its successor system.
- ~~44.~~ "Electronic manifest" (or e-manifest) means the electronic format of the hazardous waste manifest which is obtained from the environmental protection agency's national e-manifest system and transmitted electronically to the system, and which is the legal equivalent of environmental protection agency forms 8700-22 (manifest) and 8700-22A (continuation sheet).
- ~~39.45.~~ "Electronic manifest system (or e-manifest system)" means the environmental protection agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.
- ~~40.46.~~ "Elementary neutralization unit" means a device which:
- a. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in section 33.1-24-02-12, or are listed in chapter 33.1-24-02 only for this reason; and
 - b. Meets the definition of tank, tank systems, container, transport vehicle, or vessel.
- ~~41.47.~~ "Equivalent method" means any testing or analytical method approved by the department under sections 33.1-24-01-06 and 33.1-24-01-07.

- ~~42.48.~~ "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:
- a. The owner or operator has obtained all necessary federal, state, and local approvals or permits necessary to begin physical construction; and
 - b. Either of the following:
 - (1) A continuous onsite, physical construction program has begun; or
 - (2) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.
- ~~43.49.~~ "Existing portion" means that land surface area of an existing waste management unit, included in part A of the permit application, as originally filed, on which wastes have been placed prior to the issuance of a permit.
- ~~44.50.~~ "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous onsite physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.
- ~~45.51.~~ "Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.
- ~~46.52.~~ "Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions, or transporting, or any combination, those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.
- ~~47.53.~~ "Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include United States department of defense emergency explosive ordnance disposal, technical escort unit, and department of defense-certified civilian or contractor personnel and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

- 48.54. "Facility" means:
- a. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).
 - b. For the purpose of implementing corrective action under section 33.1-24-05-58 or 33.1-24-05-1031 all contiguous property under the control of the owner or operator seeking a permit under North Dakota Century Code chapter 23.1-04. This definition also applies to facilities implementing corrective action under Resource Conservation and Recovery Act section 3008(h).
 - c. Notwithstanding subdivision b, a remediation waste management site is not a facility that is subject to section 33.1-24-05-58, but is subject to corrective action requirements if the site is located within such a facility.
- 49.55. "Facility mailing list" means the mailing list for a facility developed and maintained by the department in accordance to the following:
- a. Including those persons who request in writing to be added to the facility mailing list;
 - b. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
 - c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.)
- 50.56. "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the government printing office.
- 51.57. "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, regulations, or ordinances.
- 52.58. "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under chapter 33.1-24-05 are no longer conducted at the facility unless subject to the provisions in section 33.1-24-03-12.
- 53.59. "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.
- 54.60. "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.
- 55.61. "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

- | ~~56.62.~~ "Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specification of another component.
- | ~~57.63.~~ "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in chapter 33.1-24-02 or whose act first causes a hazardous waste to become subject to regulation.
- | ~~58.64.~~ "Ground water" means water below the land surface in a zone of saturation.
- | ~~59.65.~~ "Hazardous secondary material" means a secondary material (for example, spent material, byproduct, or sludge) that, when discarded, would be identified as hazardous waste under chapter 33.1-24-02.
- | ~~60.66.~~ "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this subsection, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator.
- | ~~61.67.~~ "Hazardous waste" means a hazardous waste as defined in chapter 33.1-24-02.
- | ~~62.68.~~ "Hazardous waste constituent". See "constituent".
- | ~~63.69.~~ "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.
- | ~~64.70.~~ "Hazardous waste number" means the number assigned to each hazardous waste identified in chapter 33.1-24-02.
- | ~~65.71.~~ "Identification number" means the number assigned by the environmental protection agency and the department to each generator; transporter; and treatment, storage, or disposal facility.
- | ~~66.72.~~ "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.
- | ~~67.73.~~ "Inactive portion" means that portion of a facility which is not operated after the effective date of this chapter. (See also "active portion" and "closed portion".)
- | ~~68.74.~~ "Incinerator" means any enclosed device that:
 - a. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
 - b. Meets the definition of infrared incinerator or plasma arc incinerator.
- | ~~69.75.~~ "Incompatible waste" means a hazardous waste which is unsuitable for:
 - a. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or
 - b. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dust, mists, fumes, gases, or flammable fumes or gases.

(See appendix III of chapter 33.1-24-05 for examples.)

- | ~~70.76.~~ "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.
- | ~~74.77.~~ "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of material for energy:
- a. Cement kilns;
 - b. Lime kilns;
 - c. Aggregate kilns;
 - d. Phosphate kilns;
 - e. Coke ovens;
 - f. Blast furnaces;
 - g. Smelting, melting, and refining furnaces (including pyrometallurgical devices, such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces);
 - h. Titanium dioxide chloride process oxidation reactors;
 - i. Methane reforming furnaces;
 - j. Pulping liquor recovery furnaces;
 - k. Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
 - l. Halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty percent as generated; or
 - m. Such other devices as the department may, after notice and comment, add to this list on the basis of one or more of the following factors:
 - (1) The design and use of the device primarily to accomplish recovery of material products;
 - (2) The use of the device to burn or reduce raw materials to make a material product;
 - (3) The use of a device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feed stock;
 - (4) The use of a device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (5) The use of a device in common industrial practice to produce a material product; and
 - (6) Other factors, as appropriate.

- 72-78. "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- 73-79. "Inground tank" means a device meeting the definition of a "tank" in this section, whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.
- 74-80. "Injection well" means a well into which fluids are injected. (See also the definition of "underground injection" in this section.)
- 75-81. "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.
- 76-82. "Installation inspector" means a person who, by reason of knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.
- 77-83. "Intermediate facility" means any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.
- 78-84. "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- 79-85. "Lamp", also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste lamps include fluorescent, high-intensity discharge, neon, mercury vapor, high-pressure sodium, and metal halide lamps.
- 80-86. "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.
- 81-87. "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.
- 82-88. "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.
- 83-89. "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.
- 84-90. "Large quantity generator" means a generator who generates ~~one thousand kilograms or more of hazardous waste~~any of the following amounts in a calendar month.
- a. Greater than or equal to one thousand kilograms [2,200 pounds] of nonacute hazardous waste;
 - b. Greater than one kilogram [2.2 pounds] of acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18, listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18; or

c. Greater than one hundred kilograms [220 pounds] of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18.

- ~~85.91.~~ "Leachate" means any liquid, including any suspended components in the liquid, that have percolated through or drained from hazardous waste.
- ~~86.92.~~ "Leak detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (for example, daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.
- ~~87.93.~~ "Liner" means a continuous layer of natural or manmade materials beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.
- ~~88.94.~~ "Major facility" means any facility classified as such by the environmental protection agency in conjunction with the department.
- ~~89.95.~~ "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
- ~~90.96.~~ "Manifest" means the shipping document environmental protection agency form 8700-22 (including, if necessary, environmental protection agency form 8700-22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of chapters 33.1-24-03 and 33.1-24-04, sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-819, and subsection 5 of section 33.1-24-06-16.
- ~~91.97.~~ "Manifest tracking number" means the alphanumeric identification number (for example, a unique three-letter suffix preceded by nine numerical digits), which is preprinted in item 4 of the manifest by a registered source.
- ~~92.98.~~ "Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.
- ~~93.99.~~ "Military munitions" means all ammunition products and components produced or used by or for the United States department of defense or the United States armed services for national defense and security, including military munitions under the control of the department of defense, the United States coast guard, the United States department of energy, and national guard personnel. The term military munitions includes confined gaseous, liquid, and solid propellants; explosives; pyrotechnics; chemical and riot control agents; smokes; and incendiaries used by department of defense components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items; improvised explosive devices; and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under

the department of energy's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

- | ~~94.100.~~ "Mining overburden returned to the minesite" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.
- | ~~95.101.~~ "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container; tank; surface impoundment; pile; land treatment unit; landfill; incinerator; boiler; industrial furnace; underground injection well with appropriate technical standards under 40 CFR part 146; containment building; corrective action management unit; unit eligible for research, development, and demonstration permit under section 33.1-24-06-20; or staging pile.
- | ~~96.102.~~ "Movement" means that hazardous waste transported to a facility in an individual vehicle.
- | ~~97.103.~~ "Municipality" means a city, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
- | ~~98.104.~~ "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced, after November 19, 1980. (See also "existing hazardous waste management facility".)
- | ~~99.105.~~ "New tank system" or "new tank components" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986, except; however, for purposes of subdivision b of subsection 7 of section 33.1-24-05-106, a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system".)
- | ~~400.106.~~ "No free liquids" as used in subdivision w of subsection 1 and subdivision p of subsection 2 of section 33.1-24-02-04, means that solvent-contaminated wipes may not contain free liquids as determined by method 9095B (paint filter liquids test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (environmental protection publication SW-846), as incorporated by reference in section 33.1-24-01-05, and that there is no free liquid in the container holding the wipes.
- | ~~401.107.~~ "Nonacute hazardous waste" means all hazardous wastes that are not acute hazardous waste.
- | ~~108.~~ "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way the bottom of the tank is on the same level as the adjacent surrounding surface so the external tank bottom cannot be visually inspected.
- | ~~402.109.~~ "Onsite" means the same or geographically contiguous property which may be divided by public or private right of way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right of way. Noncontiguous property owned by the same person, but connected by a right of way which that person controls and to which the public does not have access is also considered onsite property.
- | ~~403.110.~~ "Open burning" means the combustion of any material without the following characteristics:
 - a. Control of combustion air to maintain adequate temperature for efficient combustion;
 - b. Containment of the combustion reactions in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

c. Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)

- ~~404.111.~~ "Operator" means the person responsible for the overall operation of a facility.
- ~~405.112.~~ "Owner" means the person who owns a facility or part of a facility.
- ~~406.113.~~ "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of chapter 33.1-24-05 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.
- ~~407.114.~~ "Permit" means an authorization, license, or equivalent control document issued by the department to implement the requirements of chapters 33.1-24-06 and 33.1-24-07. Permit includes permit by rule (section 33.1-24-06-18), emergency permit (subsection 1 of section 33.1-24-06-19), and standardized permit (sections 33.1-24-06-45 through 33.1-24-06-85). Permit does not include hazardous waste interim status (section 33.1-24-06-16), or any permit that has not been the subject of final department action, such as a draft permit or a proposed permit.
- ~~408.115.~~ "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.
- ~~409.116.~~ "Personnel" or "facility personnel" means all persons who work at, or oversee the operation of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of chapter 33.1-24-05 or 40 CFR part 265.
- ~~410.117.~~ "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:
- a. Is a new animal drug under federal Food, Drug, and Cosmetic Act section 201(w);
 - b. Is an animal drug that has been determined by regulation of the secretary of health and human services not to be a new animal drug; or
 - c. Is an animal feed under federal Food, Drug, and Cosmetic Act section 201(x) that bears or contains any substances described by subdivision a or b.
- ~~411.118.~~ "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.
- ~~412.119.~~ "Plasma arc incinerator" means any enclosed device using a high-intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- ~~413.120.~~ "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.
- ~~414.121.~~ "Publicly owned treatment works" means any device or system used in the treatment (including recycling or reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by this state or a municipality. This definition includes sewers, pipes, or other

conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

~~415.~~122. "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground water monitoring and contaminant fate and transport.

~~416.~~123. "Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

~~124.~~ "Remanufacturing" means processing a higher value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial grade material. For the purpose of this subsection, a hazardous secondary material is considered higher value if it was generated from the use of a commercial grade material in a manufacturing process and can be remanufactured into a similar commercial grade material.

~~417.~~125. "Remediation waste" means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that are managed for implementing cleanup.

~~418.~~126. "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing, or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under section 33.1-24-05-58, but is subject to corrective action requirements if the site is located in such a facility.

~~419.~~127. "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and which is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or department-approved corrective action.

~~420.~~128. "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or ground water), which can be expected to exhibit the average properties of the universe or whole.

~~421.~~129. "Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

~~422.~~130. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

~~423.~~131. "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

~~424.~~132. "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~425.133.~~ "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of two thousand five hundred British thermal unit per pound of sludge treated on a wet-weight basis.

~~426.134.~~ "Small quantity generator" means a generator who generates ~~more than one hundred kilograms, but less than one thousand kilograms, of hazardous waste~~ the following amounts in a calendar month:

a. Greater than one hundred kilograms [220 pounds] but less than one thousand kilograms [2,200 pounds] of nonacute hazardous waste;

b. Less than or equal to one kilogram [2.2 pounds] of acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18; and

c. Less than or equal to one hundred kilograms [220 pounds] of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18.

~~427.135.~~ "Solid waste" means a solid waste as defined in section 33.1-24-02-02.

~~428.136.~~ a. "Solvent-contaminated wipe" means a wipe that, after use or after cleaning up a spill, either:

(1) Contains one or more of the F001 through F005 solvents listed in section 33.1-24-02-16 or the corresponding P- or U-listed solvents found in section 33.1-24-02-18;

(2) Exhibits a hazardous characteristic found in sections 33.1-24-02-10 through 33.1-24-02-14 when that characteristic results from a solvent listed in chapter 33.1-24-02; or

(3) Exhibits only the hazardous waste characteristic of ignitability found in section 33.1-24-02-11 due to the presence of one or more solvents that are not listed in chapter 33.1-24-02; or

(4) Any combination of paragraphs 1, 2, or 3.

b. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at subdivision w of subsection 1 of section 33.1-24-02-04 and subdivision p of subsection 2 of section 33.1-24-02-04.

~~429.137.~~ "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

~~430.138.~~ "Staging pile" means an accumulation of solid, nonflowing remediation waste that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the department according to the requirements of section 33.1-24-05-554.

~~431.139.~~ "Standardized permit" means a hazardous waste permit issued under sections 33.1-24-07-40 through 33.1-24-07-54 and sections 33.1-24-06-45 through 33.1-24-06-85 authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts--a uniform portion issued in all cases and a supplemental portion issued at the department's discretion.

- ~~432~~140. "State" means this state.
- ~~433~~141. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
- ~~434~~142. "Sump" means any pit or reservoir that meets the definition of tank and those troughs or trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities, except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.
- ~~435~~143. "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding; storage; settling; and aeration pits, ponds, and lagoons.
- ~~436~~144. "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic), which provide structural support.
- ~~437~~145. "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
- ~~438~~146. "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)
- ~~439~~147. "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.
- ~~440~~148. "Toxicity equivalence" means the international method of relating the toxicity of various dioxin, or furan, or both congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.
- ~~441~~149. "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, or other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.
- ~~442~~150. "Transport vehicle" means a motor vehicle or railcar used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.
- ~~443~~151. "Transportation" means the movement of hazardous wastes by air, rail, highway, or water.
- ~~444~~152. "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.
- ~~445~~153. "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

- a. Whether the waste is amenable to the treatment process;
- b. What pretreatment (if any) is required;
- c. The optimal process conditions needed to achieve the desired treatment;
- d. The efficiency of a treatment process for a specific waste or wastes; or
- e. The characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of subsections 5 and 6 of section 33.1-24-02-04 exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effect studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

- | ~~446.154.~~ 154. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
- | ~~447.155.~~ 155. "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.
- | ~~448.156.~~ 156. "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also the definition of "injection well" in this section.)
- | ~~449.157.~~ 157. "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.
- | ~~450.158.~~ 158. "Unfit for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.
- | ~~451.159.~~ 159. "User of the electronic manifest system" means a hazardous waste generator; a hazardous waste transporter; an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility; or any other person that:
 - a. Is required to use a manifest to comply with:
 - (1) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an offsite-designated facility for treatment, storage, recycling, or disposal; or
 - (2) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and
 - b. Elects to use the system to obtain, complete, and transmit an electronic manifest format supplied by the environmental protection agency electronic manifest system; or
 - c. Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with paragraph 5 of subdivision b of subsection 1 of section 33.1-24-05-38, or the applicable requirements of subsection 5 of section 33.1-24-06-16. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

- ~~452.160.~~ "United States" means the fifty states, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the commonwealth of the northern Mariana Islands.
- ~~453.161.~~ "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of sections 33.1-24-05-700 through 33.1-24-05-799:
- a. Batteries as described in section 33.1-24-05-702;
 - b. Pesticides as described in section 33.1-24-05-703;
 - c. Mercury-containing equipment as described in section 33.1-24-05-704; and
 - d. Lamps as described in section 33.1-24-05-705.
- ~~454.162.~~ "Universal waste handler":
- a. Means:
 - (1) A generator (as defined in this section) of universal waste; or
 - (2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.
 - b. Does not mean:
 - (1) A person who treats, except under the provisions of subsection 1 or 3 of section 33.1-24-05-713, disposes of, or recycles universal waste; or
 - (2) A person engaged in the offsite transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.
- ~~455.163.~~ "Universal waste transporter" means a person engaged in the offsite transportation of universal waste by air, rail, highway, or water.
- ~~456.164.~~ "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.
- ~~457.165.~~ "Uppermost aquifer" means the natural geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.
- ~~458.166.~~ "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
- ~~459.167.~~ "Very small quantity generator" means any generator who generates less than or equal to the following amounts in a calendar month:
- a. One hundred kilograms [220 pounds] of nonacute hazardous waste;
 - b. One kilogram [2.2 pounds] of acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18; and
 - c. One hundred kilograms [220 pounds] or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18.

~~168.~~ "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

~~460.~~~~169.~~ "Wastewater treatment unit" means a device which:

- a. Is part of a wastewater treatment facility which is subject to regulation under either section 402 or 307(b) of the Clean Water Act;
- b. Receives and treats or stores an influent wastewater, which is a hazardous waste as identified in section 33.1-24-02-03, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in section 33.1-24-02-03, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in section 33.1-24-02-03; and
- c. Meets the definition of tank or tank system.

~~461.~~~~170.~~ "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~462.~~~~171.~~ "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form and often walled with bricks or tubing to prevent the earth from caving in.

~~463.~~~~172.~~ "Well injection". (See "underground injection".)

~~464.~~~~173.~~ "Wipe" means a woven or nonwoven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

~~465.~~~~174.~~ "Zone of engineering control" means an area under the control of the owner or operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

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General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-05. References.

1. When used in this article, the following publications are incorporated by reference. Copies may be inspected at the library, United States environmental protection agency, 1200 Pennsylvania Avenue NW (3403T), Washington, D.C. 20460, libraryhq@epa.gov; or at the national archives and records administration. For information on the availability of this material at the national archives and records administration, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

2. The following materials are available for purchase from the American society for testing and materials, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, Pennsylvania 19428-2959:

- a. ASTM D93-79 or D93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester".
- b. ASTM D1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography".
- c. ASTM D2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography".

- d. ASTM D2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)".
 - e. ASTM D2879-92, "Standard Test Method for Vapor Pressure -Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope".
 - f. ASTM D3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester".
 - g. ASTM E168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis".
 - h. ASTM E169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis".
 - i. ASTM E260-85, "Standard Practice for Packed Column Gas Chromatography".
 - j. ASTM E926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals", Test Method C - Bomb, Acid Digestion Method.
 - k. ASTM D6450-99, "Standard Test Method for Flash Point by Continuously Closed Cup Tester".
3. The following materials are available for purchase from the national technical information service, 5285 Port Royal Road, Springfield, Virginia 22161, 703-605-6060 or 800-553-6847; or for purchase from the superintendent of documents, United States government printing office, Washington, D.C. 20402, 202-512-1800:
- a. "APTI Course 415: Control of Gaseous Emissions", environmental protection agency publication EPA-450/2-81-005, December 1981.
 - b. Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Nonpolar Material) by Extraction and Gravimetry:
 - (1) Revision A, EPA-821-R-98-002, February 1999.
 - (2) Revision B, EPA-821-R-10-001, February 2010.
 - c. The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, third edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times):
 - (1) Method 0010, dated September 1986 and in the Basic Manual.
 - (2) Method 0020, dated September 1986 and in the Basic Manual.
 - (3) Method 0030, dated September 1986 and in the Basic Manual.
 - (4) Method 1320, dated September 1986 and in the Basic Manual.
 - (5) Method 1311, dated September 1992 and in Update I.

- (6) Method 1330A, dated September 1992 and in Update I.
 - (7) Method 1312, dated September 1994 and in Update III.
 - (8) Method 0011, dated December 1996 and in Update III.
 - (9) Method 0023A, dated December 1996 and in Update III.
 - (10) Method 0031, dated December 1996 and in Update III.
 - (11) Method 0040, dated December 1996 and in Update III.
 - (12) Method 0050, dated December 1996 and in Update III.
 - (13) Method 0051, dated December 1996 and in Update III.
 - (14) Method 0060, dated December 1996 and in Update III.
 - (15) Method 0061, dated December 1996 and in Update III.
 - (16) Method 9071B, dated April 1998 and in Update IIIA.
 - (17) Method 1010A, dated November 2004 and in Update IIIB.
 - (18) Method 1020B, dated November 2004 and in Update IIIB.
 - (19) Method 1110A, dated November 2004 and in Update IIIB.
 - (20) Method 1310B, dated November 2004 and in Update IIIB.
 - (21) Method 9010C, dated November 2004 and in Update IIIB.
 - (22) Method 9012B, dated November 2004 and in Update IIIB.
 - (23) Method 9040C, dated November 2004 and in Update IIIB.
 - (24) Method 9045D, dated November 2004 and in Update IIIB.
 - (25) Method 9060A, dated November 2004 and in Update IIIB.
 - (26) Method 9070A, dated November 2004 and in Update IIIB.
 - (27) Method 9095B, dated November 2004 and in Update IIIB.
4. The following materials are available for purchase from the national fire protection association, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269-9101:
- a. "Flammable and Combustible Liquids Code" ([NFPA 30](#)) (1977 or 1981), [IBR approved for subsection 2 of section 33.1-24-03-28, subsection 2 of section 33.1-24-05-111, subsection 2 of section 33.1-24-05-1112, and subsection 5 of section 33.1-24-06-16.](#)
 - b. [Reserved]
5. The following materials are available for purchase from the American petroleum institute, 1220 L Street NW, Washington, D.C. 20005:
- a. API publication 2517, Third edition, February 1989, "Evaporative Loss from External Floating - Roof Tanks".
 - b. [Reserved]

6. The following materials are available for purchase from the environmental protection agency, Research Triangle Park, North Carolina:
 - a. "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, environmental protection agency publication number EPA-450/R-92-019.
 - b. [Reserved]
7. The following materials are available for purchase from the organization for economic cooperation and development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France:
 - a. ~~Organization for Economic Cooperation and Development Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in appendix 3, appendix 4, and appendix 5, respectively, to the organization for economic cooperation and development council decision C(92)39/FINAL (concerning the control of transfrontier movements of wastes destined for recovery operations).~~ Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for subsection 1 of section 33.1-24-03-52, subsection 2 of section 33.1-24-03-53, subsection 4 of section 33.1-24-03-53, subsection 7 of section 33.1-24-03-53, subsection 2 of section 33.1-24-03-55, and subsection 4 of section 33.1-24-03-55.
 - b. [Reserved]

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-09. Nonwaste determinations and variances from classification as a solid waste.

In accordance with the standards and criteria in sections 33.1-24-01-10 and 33.1-24-01-17 and the procedures in section 33.1-24-01-12, the department may determine on a case-by-case basis the following recycled materials are not solid wastes:

1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in subdivision h of subsection 3 of section 33.1-24-02-01);
2. Materials that are reclaimed and then reused within the original production process in which they were generated;
3. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;
4. Hazardous secondary materials that are reclaimed in a continuous industrial process;
5. Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate; ~~and~~
- ~~6. Hazardous secondary materials that are transferred for reclamation under subdivision y of subsection 1 of section 33.1-24-02-04, and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste permit or interim status standards.~~

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-16. Availability of information.

All records related to this article not specifically protected by state or federal law must be made available to the public in accordance with the following provisions:

1. **Definitions.** For the purposes of this article:

- a. "Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by the department. The term includes informal writings (such as drafts and the like) and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by the department, its predecessors, its officers, and its employees by use of state funds or in the course of transacting official business. However, the term does not include materials which are legally owned by a department officer or employee in that person's purely personal capacity. Nor does the term include materials published by nonstate organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in the department's possession.
- b. "Request" means a request to inspect or obtain a copy of one or more records.
- c. "Requester" means any person who has submitted a request to the department.

2. **Requests to which this section applies.**

- a. This section applies to any written request received by the department whether or not it cites this availability of information section.
- b. Any written request to the department for existing records prepared by the department for routine public distribution, for example, pamphlets, copies of speeches, press releases, and educational materials must be honored. No individual determination is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public.
- c. After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used, and submitted under subdivision e of subsection 1 of section 33.1-24-02-25 and subsection 1 of section 33.1-24-02-27, and with respect to information contained in hazardous waste export, import, and transit documents, prepared, used, and submitted under sections 33.1-24-03-50 through 33.1-24-03-55, whether submitted electronically into the environmental protection agency's waste import export tracking system or in paper format.

3. **Requests which do not reasonably describe records sought.** The department will make every reasonable effort to assist in the identification and description of records sought and to assist the requester in formulating a request. If a request is described in general terms (for example, all records having to do with a certain area), the department may communicate with the requester (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable by the requester. Such attempts will not be used as a means to discourage requests, but rather as a means to help identify with more specificity the records actually sought.

4. Time allowed for issuance of initial determination.

- a. Except as otherwise provided in this section, not later than the tenth working day after the date of receipt of a request for records, the department shall issue a written determination to the requester stating which of the requested records will, and which will not, be released and the reason for any denial of a request. If the records are not known to exist or are not in the department's possession, the department shall so inform the requester. To the extent requested records which are in the department's possession are published by the department, the response may inform the requester that the records are available for inspection and where copies can be obtained.
- b. The period of ten working days must be measured from the date the request is first received and logged into the department.
- c. There must be excluded from the period of ten working days (or any extension thereof) any time which elapses between the date that a requester is notified by the department that the person's request does not reasonably identify the records sought, and the date that the requester furnishes a reasonable identification.
- d. There must be excluded from the period of ten working days (or any extension thereof) any time which elapses between the date that a requester is notified by the department that prepayment or assurance of payment of fees is required, and the date the requester pays (or makes suitable arrangements to pay) such charges.
- e. The department may extend the basic ten-day period established under subdivision a by a period not to exceed ten additional working days, by furnishing written notice to the requester within the basic ten-day period, stating the reasons for such extension and a date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension:
 - (1) There is a need to search and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
 - (2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
 - (3) There is a need for consultation, which must be conducted with all practicable speed, with another division having a substantial interest in the determination of the request.
- f. Failure of the department to issue a determination within the ten-day period or any authorized extension constitutes final department action which authorizes the requester to commence an action in an appropriate state district court to obtain the records.

5. Initial denials of requests.

- a. An initial denial of a request may be issued only for the following reasons:
 - (1) The records requested are specifically protected by state or federal law; or
 - (2) The records are deemed enforcement-sensitive.
- b. Each initial determination which denies, in whole or in part, a request for one or more existing located records must state that the requester may appeal the initial denial by sending a written appeal to the department within thirty days of receipt of the determination.

6. **Appeals from initial denials - Manner of making.**
 - a. Any person whose request for one or more existing, located department records has been denied, in whole or in part, by an initial determination may appeal that denial by addressing a written appeal to the department.
 - b. An appeal should be mailed no later than thirty calendar days after the date the requester received the initial determination on the request. An untimely appeal may be treated either as a timely appeal or as a new request.
 - c. The appeal letter must contain a reference to the subject line, the date of initial determination, and the name and address of the person who issued the initial denial. The appeal letter must also indicate which of the records to which access was denied are the subjects of the appeal.
7. **Appeal determination - By whom made.** The department's legal counsel shall make one of the following legal determinations in connection with an appeal from the initial denial of a request for an existing, located record:
 - a. The record must be disclosed;
 - b. The record must not be disclosed because a statute or a provision of this section so requires; or
 - c. The record is exempt from mandatory disclosure but legally may be disclosed as a matter of department discretion.
8. **Contents of determination denying appeal.** A determination denying an appeal from an initial denial must be in writing, must state which of the exemptions apply to each requested existing record, and must state the reasons for denial of the appeal. A denial determination must also state the name and position of the department employee who directed that the appeal be denied. Such a determination must further state that the person whose request was denied may obtain de novo judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or in which the department's records are located. However, no determination denying an appeal may reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information, or a confidential investigation. Instead of identifying the existence or nonexistence of the records, the determination must state that the appeal is denied because either the records do not exist or they are exempt from mandatory disclosure.
9. **Time allowed for issuance of appeal determination.**
 - a. Except as otherwise provided in this section, not later than the twentieth working day after the date of receipt of the informational request of an appeal from an initial denial of a request for records, the department's legal counsel shall issue a written determination stating which of the requested records (as to which an appeal was made) shall be disclosed and which shall not be disclosed.
 - b. The period of twenty working days must be measured from the date an appeal is first received by the department.
 - c. The department's legal counsel may extend the basic twenty-day period established under subdivision a by a period not to exceed ten additional working days, by furnishing written notice to the requester within the basic twenty-day period stating the reason for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for

the period required, and only when one or more of the following unusual circumstances require the extension:

- (1) There is a need to search for and collect the records from field facilities or other establishments that are separate from the office processing the appeal;
- (2) There is need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) There is a need for consultation, which must be conducted with all practicable speed, with another division having a substantial interest in the determination of the request.

d. No extension of the twenty-day period shall be issued under subdivision c which would cause the total of all such extensions to exceed ten working days.

10. **Failure to decide on appeal by deadline.** Failure to decide if an appealed record must be disclosed by the deadline imposed in this section constitutes final agency action and the requester's right to judicial review.

11. **Fees - Payments - Waiver.**

- a. Fees will be charged to requesters for searching for and producing requested records in accordance with department policy.
- b. Reduction or waiver of fee. The fee chargeable under department policy must be reduced or waived by the department if the department determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Reduction or waiver of fees must be considered (need not necessarily be granted) in connection with each request from a representative of the press or other communications medium or from a public interest group.

History: Effective January 1, 2019; [amended effective July 1, 2020.](#)

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1; [42 USC § 6926\(b\)](#); [40 CFR § 271.21\(e\)\(1\)](#)

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19; [40 CFR § 271.21\(e\)\(2\)](#)

CHAPTER 33.1-24-02 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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33.1-24-02-01. Purpose and scope.

1. This chapter identifies those solid wastes which are subject to regulation as hazardous wastes and which are subject to the notification requirements. In this chapter:
 - a. Sections 33.1-24-02-01 through 33.1-24-02-07 define the terms "solid waste" and "hazardous waste", identify those wastes which were excluded from regulation under chapters 33.1-24-03 through 33.1-24-07, and establish special management requirements for hazardous waste produced by **conditionally-exempt** very small quantity generators and hazardous waste which is recycled.
 - b. Sections 33.1-24-02-08 and 33.1-24-02-09 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous waste.
 - c. Sections 33.1-24-02-10 through 33.1-24-02-14 identify characteristics of hazardous waste.
 - d. Sections 33.1-24-02-15 through 33.1-24-02-19 list particular hazardous wastes.
2. The definition of solid waste contained in this chapter:
 - a. Applies only to wastes that also are hazardous for purposes of the rules implementing North Dakota Century Code chapter 23.1-04. For example, it does not apply to materials (such as nonhazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recyclable.
 - b. This chapter identifies only some of the materials which are solid wastes and hazardous wastes under North Dakota Century Code chapter 23.1-04. A material which is not defined as a solid waste in this chapter or is not a hazardous waste identified or listed in this chapter, is still a solid waste and a hazardous waste for purposes of these sections if:
 - (1) In the case of North Dakota Century Code section 23.1-04-12, the department has reason to believe that the material may be a hazardous waste within the meaning of subsection 6 of North Dakota Century Code section 23.1-04-02; or
 - (2) In the case of North Dakota Century Code section 23.1-04-14, the statutory elements are established.
3. For the purpose of sections 33.1-24-02-02 and 33.1-24-02-06:

- a. A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.
- b. "Sludge" has the same meaning used in section 33.1-24-01-04.
- c. A "byproduct" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residue, such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.
- d. A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of subdivisions x and y of subsection 1 of section 33.1-24-02-04, smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in subdivisions a through c of subsection 4 of section 33.1-24-05-525, and if the residuals meet the requirements specified in section 33.1-24-05-537.
- e. A material is "used or reused" if it is either:
 - (1) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal containing secondary materials); or
 - (2) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner or in wastewater treatment).
- f. "Scrap metal" is bits and pieces of metal parts (for example, bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (for example, radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.
- g. A material is "recycled" if it is used, reused, or reclaimed.
- h. A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year (commencing on January first) the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the seventy-five percent requirement is to be applied to each material of the same type (for example, slags from a single smelting process) that is recycled in the same way (for example, from which the same material is recovered or that is used in the same way). Material accumulating in units that would be exempt from regulation under subsection 3 of section 33.1-24-02-04 are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation.

Materials are no longer in this category once they are removed from accumulation for recycling, however.

- i. "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.
- j. "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.
- k. "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (for example, sorted), and fines, drosses, and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (subdivision n of subsection 1 of section 33.1-24-02-04)).
- l. "Prompt scrap metal" is scrap metal as generated by the metal working and fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap metal is also known as industrial or new scrap metal.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-02-04. Exclusions.

1. **Materials that are not solid wastes.** The following materials are not solid wastes for the purpose of this chapter:
 - a. Domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.
 - b. Industrial wastewater discharges that are point source discharges subject to regulation under subsections 18 and 19 of North Dakota Century Code section 61-28-04. (Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)
 - c. Irrigation return flows.
 - d. Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].
 - e. Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process.
 - f. Pulping liquors (for example, black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection 3 of section 33.1-24-02-01.
 - g. Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection 3 of section 33.1-24-02-01.

- h. Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:
 - (1) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
 - (2) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
 - (3) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
 - (4) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

- i. Wood preserving:
 - (1) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and
 - (2) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.
 - (3) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in paragraphs 1 and 2, so long as they meet all of the following conditions:
 - (a) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at waterborne plants in the production process for their original intended purpose;
 - (b) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;
 - (c) Any unit used to manage wastewaters and spent wood preserving solutions, or both, prior to reuse can be visually or otherwise determined to prevent such releases;
 - (d) Any drip pad used to manage the wastewaters and spent wood preserving solutions, or both, prior to reuse complies with the applicable standards in subsection 5 of section 33.1-24-06-16, regardless of whether the plant generates a total of less than one hundred kilograms per month of hazardous waste; and
 - (e) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language:

"I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation."

The plant must maintain a copy of that document in its onsite records until closure of the facility. The exclusion applies only so long as the plant meets all

of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

- j. Hazardous waste numbers K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke byproducts processes that are hazardous only because they exhibit the toxicity characteristic specified in section 33.1-24-02-14 when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.
- k. Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.
- l. Materials considered:
 - (1) Oil-bearing hazardous secondary materials (for example, sludges, byproducts, or spent materials) that are generated at a petroleum refinery (standard industrial code 2911) and are inserted into the petroleum refining process (standard industrial code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units (for example, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph 2, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (for example, from sources other than petroleum refineries) are not excluded under this paragraph. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under sections 33.1-24-02-15 through 33.1-24-02-19, are designated as F037 listed wastes when disposed or intended for disposal.
 - (2) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph 1. Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (standard industrial codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in sections 33.1-24-02-15 through 33.1-24-02-19; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in section 33.1-24-05-600.
- m. Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.
- n. Shredded circuit boards being recycled provided that they are:
 - (1) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

- (2) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.
- o. Condensates derived from the overhead gases from kraft mill stream strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.
- p. [Reserved].
- q. Spent materials (as defined in section 33.1-24-02-01) (other than hazardous wastes listed in sections 33.1-24-02-15 through 33.1-24-02-19) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing, or by beneficiation, provided that:
 - (1) The spent material is legitimately recycled to recover minerals, acids, cyanide, water, or other values;
 - (2) The spent material is not accumulated speculatively;
 - (3) Except as provided in paragraph 4, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of nonearthen materials providing structural support (except smelter buildings may have partially earthen floors provided the spent material is stored on the nonearthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be freestanding, not be a surface impoundment (as defined in section 33.1-24-01-04), and be manufactured of a material suitable for containment of its contents; a container must be freestanding and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner or operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed, and operated to prevent significant releases to the environment of these materials.
 - (4) The department may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decisionmaker must affirm that pads are designed, constructed, and operated to prevent significant releases of the spent material into the environment. Pads must provide the same degree of containment afforded by the hazardous waste tanks, containers, and buildings eligible for exclusion.
 - (a) The decisionmaker must also consider if storage on pads poses the potential for significant releases via ground water, surface water, and air exposure pathways. Factors to be considered for assessing the ground water, surface water, and air exposure pathways are the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway; and the possibility and extent of harm to human and environmental receptors via each exposure pathway.
 - (b) Pads must meet the following minimum standards: be designed of nonearthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with

placement and removal; have run-on or runoff controls, or both; be operated in a manner which controls fugitive dust; and have integrity assurance through inspections and maintenance programs.

- (c) Before making a determination under this paragraph, the department must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers or broadcasting notice over local radio stations.
- (5) The owner or operator provides notice to the department, providing the following information: the types of materials to be recycled, the type and location of the storage units and recycling processes, and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.
- (6) For purposes of subdivision g of subsection 2, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by nonmineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.
- r. Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (standard industrial code 2911) along with normal petroleum refinery process streams, provided:
 - (1) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in section 33.1-24-02-11) or toxicity for benzene (as defined in section 33.1-24-02-14, hazardous waste code D018), or both; and
 - (2) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary standard industrial code is 2869, but where operations may also include standard industrial codes 2821, 2822, and 2865; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (for example, sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.
- s. Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in subsection 3 of section 33.1-24-02-01.
- t. Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:
 - (1) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in subdivision h of subsection 3 of section 33.1-24-02-01.
 - (2) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

- (a) Submit a one-time notice to the department, which contains the name, address, and identification number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this subdivision.
 - (b) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of nonearthen materials that provide structural support, and must have a floor, walls, and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:
 - [1] Have containment structures or systems sufficiently impervious to contain leaks, spills, and accumulated precipitation;
 - [2] Provide for effective drainage and removal of leaks, spills, and accumulated precipitation; and
 - [3] Prevent run-on into the containment system.
 - (c) With each offsite shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this subdivision.
 - (d) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:
 - [1] Name of the transporter and date of the shipment;
 - [2] Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and
 - [3] Type and quantity of excluded secondary material in each shipment.
- (3) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:
- (a) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in subparagraph b of paragraph 2.
 - (b) Submit a one-time notification to the department that, at a minimum, specifies the name, address, and identification number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this subdivision.

- (c) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.
- (d) Submit to the department an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process or processes from which they were generated. The annual report shall be submitted by March first of every year.
- (4) Nothing in this subdivision preempts, overrides, or otherwise negates the provision in section 33.1-24-03-02, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.
- (5) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in subparagraph a of paragraph 2, and that afterward will be used only to store hazardous secondary materials excluded under this subdivision, are not subject to the closure requirements of sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819 and the applicable requirements of subsection 5 of section 33.1-24-06-16.
- u. Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under subdivision t, provided that:

- (1) The fertilizers meet the following contaminant limits:

- (a) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, Per Unit (1 Percent) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

- (b) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).
- (2) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the

sampling and analysis are unbiased, precise, and representative of the product or products introduced into commerce.

- (3) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph 2. Such records must at a minimum include:
 - (a) The dates and times product samples were taken and the dates the samples were analyzed;
 - (b) The names and qualifications of the person taking the samples;
 - (c) A description of the methods and equipment used to take the samples;
 - (d) The name and address of the laboratory facility at which analyses of the samples were performed;
 - (e) A description of the analytical methods used, including any cleanup and sample preparation methods; and
 - (f) All laboratory analytical results used to determine compliance with the contaminant limits specified in subdivision u.
- v. Used cathode ray tubes:
 - (1) Used, intact cathode ray tubes as defined in section 33.1-24-01-04 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in subdivision h of subsection 3 of section 33.1-24-02-01 by cathode ray tube collectors or glass processors.
 - (2) Used, intact cathode ray tubes as defined in section 33.1-24-01-04 are not solid wastes when exported for recycling provided that they meet the requirements of section 33.1-24-02-26.
 - (3) Used, broken cathode ray tubes as defined in section 33.1-24-01-04 are not solid wastes provided that they meet the requirements of section 33.1-24-02-25.
 - (4) Glass removed from cathode ray tubes is not a solid waste provided that it meets the requirements of subsection 3 of section 33.1-24-02-25.
- w. Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:
 - (1) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "excluded solvent-contaminated wipes." The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;
 - (2) The solvent-contaminated wipes may be accumulated by the generator for up to one hundred eighty days from the start date of accumulation for each container prior to being sent for cleaning;

- (3) At the point of being sent for cleaning onsite or at the point of being transported offsite for cleaning, the solvent-contaminated wipes must contain no free liquids as defined in section 33.1-24-01-04;
 - (4) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in chapters 33.1-24-01 through 33.1-24-04 and 33.1-24-06, and sections 33.1-24-05-01 through 33.1-24-05-559, 33.1-24-05-700 through 33.1-24-05-929, and 33.1-24-05-950 through 33.1-24-05-1149;
 - (5) Generators must maintain at the facility the following documentation:
 - (a) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;
 - (b) Documentation that the 180-day accumulation time limit in paragraph 2 of subdivision w of subsection 1 of section 33.1-24-02-04 is being met; and
 - (c) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned onsite or at the point of being transported offsite for laundering or dry cleaning;
 - (6) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.
- x. Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with:
- (1) The hazardous secondary material:
 - (a) Is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or
 - (b) Is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in section 33.1-24-01-04, and if the generator provides one of the following certifications: "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this subparagraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in section 33.1-24-01-04 shall not be deemed to "control" such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or

received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (for example, financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmation); or

- (c) Is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process." The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (for example, financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmations). For purposes of this subparagraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contact with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.
- (2) The following requirements apply to hazardous secondary material managed under this exclusion:
- (a) The hazardous secondary material is contained as defined in section 33.1-24-01-04. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.
 - (b) The hazardous secondary material is not speculatively accumulated, as defined in subdivision h of subsection 3 of section 33.1-24-02-01.
 - (c) Notice is provided as required by section 33.1-24-01-18.
 - (d) The material is not otherwise subject to material-specific management conditions under subsection 1 when reclaimed, and it is not a spent lead-acid battery (see sections 33.1-24-05-235 and 33.1-24-05-702).

- (e) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination onsite. Documentation must be a written description of how the recycling meets all four factors in subsection 1 of section 33.1-24-01-19. Documentation must be maintained for three years after the recycling operation has ceased.
 - (f) The emergency preparedness and response requirements found in sections 33.1-24-02-120 through 33.1-24-02-129 are met.
- y. Hazardous secondary material that is generated and then transferred to ~~a verified reclamation facility~~another person for the purpose of reclamation is not a solid waste, provided that:
- (1) The material is not speculatively accumulated, as defined in subdivision h of subsection 3 of section 33.1-24-02-01;
 - (2) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ten days at a transfer facility, as defined in section 33.1-24-01-04, and is packaged according to applicable department of transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;
 - (3) The material is not otherwise subject to material-specific management conditions under subsection 1 when reclaimed, and it is not a spent lead-acid battery (see sections 33.1-24-05-235 and 33.1-24-05-702);
 - (4) The reclamation of the material is legitimate, as specified under section 33.1-24-01-19;
 - (5) The hazardous secondary material generator satisfied all of the following conditions;
 - (a) The material must be contained as defined in section 33.1-24-01-04. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.
 - (b) ~~The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility or facilities in the United States. A verified reclamation facility is a facility that has been granted a variance under subsection 4 of section 33.1-24-01-10, or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under subsection 4 of section 33.1-24-01-10 or the management of the hazardous secondary materials at that facility must be addressed under a hazardous waste permit or interim status standards, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.~~Prior to arranging for transport of hazardous secondary materials to a reclamation facility where the management of hazardous secondary materials is not addressed under a hazardous waste permit or interim status standards, the hazardous secondary material generator shall make reasonable

efforts to ensure each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it; and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste permit or interim status standards, the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator shall perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, or provided by a third party, or provided by both. The hazardous secondary material generator shall answer affirmatively all of the following questions for each reclamation facility and any intermediate facility:

[1] Does the available information indicate the reclamation process is legitimate pursuant to section 33.1-24-01-19?

[2] Does the publicly available information indicate the reclamation facility, and any intermediate facility, used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to section 33.1-24-01-18, and have they notified the appropriate authorities the financial assurance condition has been satisfied?

[3] Does the publicly available information indicate the reclamation facility, or any intermediate facility, used by the secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of North Dakota hazardous waste rules?

[4] Does the available information indicate the reclamation facility, and any intermediate facility, used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material?

[5] If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence the residuals will be managed in a manner that is protective of human health and the environment?

(c) The hazardous secondary material generator must maintain at the generating facility for no less than three years records of all offsite shipments of hazardous

secondary materials. For each shipment, these records must, at a minimum, contain the following information:

- [1] Name of the transporter and date of the shipment;
 - [2] Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent; and
 - [3] The type and quantity of hazardous secondary material in the shipment.
- (d) The hazardous secondary material generator must maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all offsite shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (for example, financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmations of receipt).
- (e) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in sections 33.1-24-02-120 through 33.1-24-02-129.
- (6) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in section 33.1-24-01-04 satisfy all of the following conditions:
- (a) The reclaimer and intermediate facility must maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent offsite from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:
 - [1] Name of the transporter and date of the shipment;
 - [2] Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;
 - [3] The type and quantity of hazardous secondary material in the shipment; and
 - [4] For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred offsite for further reclamation, the name and address of the subsequent reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.
 - (b) The intermediate facility must send the hazardous secondary material to the reclaimer or reclaimers designated by the hazardous secondary materials generator.

- (c) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all offsite shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (for example, financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmations of receipt).
 - (d) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.
 - (e) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to sections 33.1-24-02-10 through 33.1-24-02-14, or if the residuals themselves are specifically listed in sections 33.1-24-02-15 through 33.1-24-02-19, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of chapters 33.1-24-01 through 33.1-24-04, sections 33.1-24-05-01 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-929, 33.1-24-05-950 through 33.1-24-05-1149, subsection 5 of section 33.1-24-06-16 and chapter 33.1-24-06.
 - (f) The reclaimer and intermediate facility have financial assurance as required under sections 33.1-24-02-33 through 33.1-24-02-42.
 - (g) The reclaimer and intermediate facility have been granted a variance under subsection 4 of section 33.1-24-01-10 or have a hazardous waste permit or interim status standards that address the management of the hazardous secondary materials; and
- (7) All persons claiming the exclusion under this subdivision provide notification as required under section 33.1-24-01-18.
- z. Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:
- (1) The hazardous secondary material consists of one or more of the following spent solvents: toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and methanol;
 - (2) The hazardous secondary material originated from using one or more of the solvents listed in paragraph 1, in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510).

- (3) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in paragraph 1 to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), or the paints and coatings manufacturing sectors (NAICS 325510).
- (4) After remanufacturing one or more of the solvents listed in paragraph 1, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the chemical data reporting rule of the Toxic Substances Control Act [40 CFR parts 704, 710-711], including industrial function codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);
- (5) After remanufacturing one or more of the solvents listed in paragraph 1, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. These disallowed continuing uses correspond to chemical functional uses in industrial function code U029 under the chemical data reporting rule of the Toxic Substances Control Act; and
- (6) Both the hazardous secondary material generator and the remanufacturer must:
 - (a) Notify the department and update the notification every two years per section 33.1-24-01-18;
 - (b) Develop and maintain an up-to-date remanufacturing plan which identifies:
 - [1] The name, address, and identification number of the generator or generators and the remanufacturer or remanufacturers;
 - [2] The types and estimated annual volumes of spent solvents to be remanufactured;
 - [3] The processes and industry sectors that generate the spent solvents;
 - [4] The specific uses and industry sectors for the remanufactured solvents; and
 - [5] Certification from the remanufacturer stating "On behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent or solvents for the sole purpose of remanufacturing into commercial-grade solvent or solvents that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions), or for the use as product ingredient or ingredients. I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR Part 60, Part 61 or Part 63, or,

absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in sections 33.1-24-02-170 through 33.1-24-02-179 (vents), sections 33.1-24-02-180 through 33.1-24-02-199 (equipment), and sections 33.1-24-02-200 through 33.1-24-02-214 (tank storage)";

- (c) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;
- (d) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in sections 33.1-24-02-50 through 33.1-24-02-59 and sections 33.1-24-02-60 through 33.1-24-02-74, with the tanks and containers being labeled or otherwise having an immediately available record of material being stored;
- (e) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR parts 60, 61, or 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in sections 33.1-24-02-170 through 33.1-24-02-179 (vents), sections 33.1-24-02-180 through 33.1-24-02-199 (equipment), and sections 33.1-24-02-200 through 33.1-24-02-214 (tank storage); and
- (f) Meet the requirements prohibiting speculative accumulation per subdivision h of subsection 3 of section 33-24-02-01.

2. **Solid wastes that are not hazardous wastes.** The following solid wastes are not hazardous wastes:

- a. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, for example, refuse-derived fuel, or reused. "Household waste" means any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels, and motels), bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste may not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purpose of regulation under this article, if such facility:
 - (1) Receives and burns only:
 - (a) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and
 - (b) Solid waste from commercial or industrial sources that does not contain hazardous waste; and
 - (2) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

- b. Solid wastes generated by any of the following and which are returned to the soils as fertilizers:
 - (1) The growing and harvesting of agricultural crops.
 - (2) The raising of animals, including animal manures.
- c. Mining overburden returned to the minesite.
- d. Wastes generated primarily from the combustion or processes that support the combustion of coal or other fossil fuels:
 - (1) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by section 33.1-24-05-537 for facilities that burn or process hazardous waste.
 - (2) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are codisposed with the wastes in paragraph 1, except as provided by section 33.1-24-05-537 for facilities that burn or process hazardous waste:
 - (a) Coal pile runoff. For purposes of this subdivision, coal pile runoff means any precipitation that drains off coal piles.
 - (b) Boiler cleaning solutions. For purposes of this subdivision, boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.
 - (c) Boiler blowdown. For purposes of this subdivision, boiler blowdown means water purged from boilers used to generate steam.
 - (d) Process water treatment and demineralizer regeneration wastes. For purposes of this subdivision, process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.
 - (e) Cooling tower blowdown. For purposes of this subdivision, cooling tower blowdown means water purged from a closed-cycle cooling system. Closed-cycle cooling systems include cooling towers, cooling ponds, or spray canals.
 - (f) Air heater and precipitator washes. For purposes of this subdivision, air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.
 - (g) Effluents from floor and yard drains and sumps. For purposes of this subdivision, effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.
 - (h) Wastewater treatment sludges. For purposes of this subdivision, wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in subparagraphs a through f.

- e. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.
- f. The following chromium-containing wastes:
 - (1) Wastes that fail the test for the toxicity characteristic because chromium is present or are listed in this chapter due to the presence of chromium, which do not fail the test for toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:
 - (a) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium;
 - (b) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
 - (c) The waste is typically and frequently managed in nonoxidizing environments.
 - (2) Specific wastes which meet the standard of paragraph 1 (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:
 - (a) Chrome (blue) trimmings, chrome (blue) shavings, sewer screenings, and wastewater treatment sludges, generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
 - (b) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; and through-the-blue.
 - (c) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.
 - (d) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.
 - (e) Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.
- g. Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided by section 33.1-24-05-537 for facilities that burn or process hazardous waste.
 - (1) For purposes of this subdivision, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water or carbon dioxide, or both; roasting, autoclaving, or chlorination, or a combination thereof, in preparation for leaching (except when the roasting, autoclaving, or chlorination or a combination thereof, and leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation;

flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

- (2) For the purposes of this subdivision, solid waste from the processing of ores and minerals includes only the following wastes as generated:
- (a) Slag from primary copper processing;
 - (b) Slag from primary lead processing;
 - (c) Red and brown muds from bauxite refining;
 - (d) Phosphogypsum from phosphoric acid production;
 - (e) Slag from elemental phosphorous production;
 - (f) Gasifier ash from coal gasification;
 - (g) Process wastewater from coal gasification;
 - (h) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
 - (i) Slag tailings from primary copper processing;
 - (j) Fluorogypsum from hydrofluoric acid production;
 - (k) Process wastewater from hydrofluoric acid production;
 - (l) Air pollution control dust or sludge from iron blast furnaces;
 - (m) Iron blast furnace slag;
 - (n) Treated residue from roasting or leaching of chrome ore;
 - (o) Process wastewater from primary magnesium processing by the anhydrous process;
 - (p) Process wastewater from phosphoric acid production;
 - (q) Basic oxygen furnace and open hearth furnace air pollution control dust or sludge from carbon steel production;
 - (r) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
 - (s) Chloride process waste solids from titanium tetrachloride production; and
 - (t) Slag from primary zinc processing.
- (3) A residue derived from coprocessing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under this subsection if the owner or operator:
- (a) Processes at least fifty percent by weight normal beneficiation raw materials or with normal mineral processing raw materials; and
 - (b) Legitimately reclaims the secondary mineral processing materials.

- h. Cement kiln dust waste, except as provided by section 33.1-24-05-537 for facilities that burn or process hazardous waste.
- i. Solid waste that consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic for hazardous waste codes D004 through D017 and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials intended end use.
- j. Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of section 33.1-24-02-14 (hazardous waste codes D018 through D043 only) and are subject to the corrective action regulations under chapter 33.1-24-08.
- k. Injected ground water that is hazardous only because it exhibits the toxicity characteristic (hazardous waste codes D018 through D043 only) in section 33.1-24-02-14 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For ground water returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:
 - (1) Operations are performed pursuant to a written state agreement that includes a provision to assess the ground water and the need for further remediation once the free phase recovery is completed; and
 - (2) A copy of the written agreement has been submitted to Waste Identification Branch (5304), United States Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, D.C. 20460.
- l. Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air-conditioning systems, mobile refrigeration, and commercial and industrial air-conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.
- m. Nonterne plated used oil filters that are not mixed with waste listed in sections 33.1-24-02-15 through 33.1-24-02-19 if these oil filters have been gravity hot-drained using one of the following methods:
 - (1) Puncturing the filter antidrain back valve or the filter dome end and hot-draining;
 - (2) Hot-draining and crushing;
 - (3) Dismantling and hot-draining; or
 - (4) Any other equivalent hot-draining method that will remove used oil.
- n. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.
- o. Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

- (1) The solid wastes disposed would meet one or more of the listing descriptions for hazardous wastes codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;
 - (2) The solid wastes described in paragraph 1 were disposed prior to the effective date of the listing;
 - (3) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;
 - (4) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a publicly owned treatment works by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.
 - (5) As of February 13, 2001, leachate or gas condensate derived from K169 through K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.
- p. Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation, provided that:
- (1) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "excluded solvent-contaminated wipes". The containers must be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container must be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;
 - (2) The solvent-contaminated wipes may be accumulated by the generator for up to one hundred eighty days from the start date of accumulation for each container prior to being sent for disposal;
 - (3) At the point of being transported for disposal, the solvent-contaminated wipes must contain no free liquids as defined in section 33.1-24-01-04;
 - (4) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes must be managed according to the applicable regulations found in chapters 33.1-24-01 through 33.1-24-04 and 33.1-24-06, sections 33.1-24-05-01 through 33.1-24-05-559, 33.1-24-05-700 through 33.1-24-05-929, and 33.1-24-05-950 through 33.1-24-05-1149;

- (5) Generators must maintain at the facility the following documentation:
 - (a) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;
 - (b) Documentation that the one hundred eighty-day accumulation time limit in paragraph 2 of subdivision p of subsection 2 of section 33.1-24-02-04 is being met; and
 - (c) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;
 - (6) The solvent-contaminated wipes are sent for disposal:
 - (a) To a municipal solid waste landfill regulated under article 33.1-20, including chapter 33.1-20-06.1, or to a hazardous waste landfill regulated under sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819, or subsection 5 of section 33.1-24-06-16; or
 - (b) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-819, subsection 5 of section 33.1-24-06-16, or sections 33.1-24-05-525 through 33.1-24-05-549.
3. **Hazardous wastes that are exempted from certain regulations.** A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to regulation under chapters 33.1-24-03 through 33.1-24-07 or to the notification requirements until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.
4. **Samples.**
- a. Except as provided in subdivision b and d, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter or chapters 33.1-24-03 through 33.1-24-07 or to the notification requirements when:
 - (1) The sample is being transported to a laboratory for the purpose of testing;
 - (2) The sample is being transported back to the sample collector after testing;
 - (3) The sample is being stored by the sample collector before transport to a laboratory for testing;
 - (4) The sample is being stored in a laboratory before testing;
 - (5) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

- (6) The sample is being stored temporarily in the laboratory after testing for a specific purpose, e.g., until conclusion of a court case or enforcement action if further testing of the sample may be necessary.
- b. In order to qualify for the exemption in paragraphs 1 and 2 of subdivision a, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:
 - (1) Comply with the United States department of transportation, the United States postal service, or any other applicable shipping requirement; or
 - (2) Comply with the following requirements if the sample collector determines that the United States department of transportation, the United States postal service, or other shipping requirements do not apply to the shipment of the sample:
 - (a) Assure that the following information accompanies the sample:
 - [1] The sample collector's name, mailing address, and telephone number;
 - [2] The laboratory's name, mailing address, and telephone number;
 - [3] The quantity of the sample;
 - [4] The date of shipment; and
 - [5] A description of the sample.
 - (b) Package the sample so that it does not leak, spill, or vaporize from its packaging.
- c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in subdivision a.
- d. In order to qualify for the exemption in paragraphs 1 and 2 of subdivision a, the mass of a sample that will be exported to a foreign laboratory or that will be imported to a United States laboratory from a foreign source must additionally not exceed twenty-five kilograms.

5. **Treatability study samples.**

- a. Except as provided in subdivision b, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 33.1-24-01-04 are not subject to any requirement of chapters 33.1-24-02 through 33.1-24-04 or to the notification requirements, nor are such samples included in the quantity determination of section 33.1-24-02-05 and ~~subsection 4 of section 33.1-24-03-12~~ 33.1-24-03-29 when:
 - (1) The sample is being collected and prepared for transportation by the generator or sample collectors;
 - (2) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
 - (3) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
- b. The exemption in subdivision a is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

- (1) The generator or sample collector uses, in "treatability studies", no more than ten thousand kilograms of media contaminated with nonacute hazardous waste, one thousand kilograms of nonacute hazardous waste other than contaminated media, one kilogram of acute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream.
- (2) The mass of each sample shipment does not exceed ten thousand kilograms; the ten thousand kilogram quantity may be all media contaminated with nonacute hazardous waste, or may include twenty-five hundred kilograms of media contaminated with acute hazardous waste, one thousand kilograms of hazardous waste, and one kilogram of acute hazardous waste.
- (3) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of subparagraph a or b are met.
 - (a) The transportation of each sample shipment complies with United States department of transportation, United States postal service, or any other applicable shipping requirements; or
 - (b) If the United States department of transportation, United States postal service, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:
 - [1] The name, mailing address, and telephone number of the originator of the samples;
 - [2] The name, address, and telephone number of the facility that will perform the treatability study;
 - [3] The quantity of the sample;
 - [4] The date of shipment; and
 - [5] A description of the sample, including its hazardous waste number.
- (4) The sample is shipped to a laboratory or testing facility which is exempt under subsection 6 of section 33.1-23-02-04 or has an appropriate hazardous waste permit or interim status.
- (5) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:
 - (a) Copies of the shipping document;
 - (b) A copy of the contract with the facility conducting the treatability study;
 - (c) Documentation showing:
 - [1] The amount of waste shipped under this exemption;
 - [2] The name, address, and identification number of the laboratory or testing facility that received the waste;
 - [3] The date the shipment was made; and
 - [4] Whether unused samples and residues were returned to the generator.

- (6) The generator reports the information required under subparagraph c of paragraph 5 in its biennial report.
- c. The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs 1 and 2 of subdivision b and subdivision d of subsection 6, for up to an additional five thousand kilograms of media contaminated with nonacute hazardous waste, five hundred kilograms of nonacute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste, and one kilogram of acute hazardous waste:
- (1) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, for example, batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time and quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.
 - (2) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when there has been an equipment or mechanical failure during the conduct of the treatability study; there is a need to verify the results of a previous study; there is a need to study and analyze alternative techniques within a previously evaluated process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.
 - (3) The additional quantities and timeframes allowed in paragraphs 1 and 2 are subject to all the provisions in subdivision a and paragraphs 3 through 6 of subdivision b. The generator or sample collector must apply to the department and provide in writing the following information:
 - (a) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;
 - (b) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies, including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;
 - (c) A description of the technical modifications or change in specifications which will be evaluated and the expected results;
 - (d) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and
 - (e) Such other information that the department considers necessary.

d. In order to qualify for the exemption in paragraph 1 of subdivision a, the mass of a sample that will be exported to a foreign laboratory or that will be imported to a United

States laboratory from a foreign source must additionally not exceed twenty-five kilograms.

6. **Samples undergoing treatability studies at laboratories and testing facilities.** Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to hazardous waste requirements, are not subject to any requirements of this article, or to the notification requirements provided that the conditions of subdivisions a through k are met. A mobile treatment unit may qualify as a testing facility subject to subdivisions a through k. Where a group of mobile treatment units are located at the same site, the limitations specified in subdivisions a through k apply to the entire group of mobile treatment units collectively as if the group were one mobile treatment unit.
- a. No less than forty-five days before conducting treatability studies, the facility notifies the department in writing that it intends to conduct treatability studies under this subsection.
 - b. The laboratory or testing facility conducting the treatability study has an identification number.
 - c. No more than a total of ten thousand kilograms of "as received" media contaminated with nonacute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste, or two hundred fifty kilograms of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" wastes refers to the waste as received in the shipment from the generator or sample collector.
 - d. The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed ten thousand kilograms, the total of which can include ten thousand kilograms of media contaminated with nonacute hazardous waste, twenty-five hundred kilograms of media contaminated with acute hazardous waste, one thousand kilograms of nonacute hazardous waste other than contaminated media, and one kilogram of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.
 - e. No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date occurs first. Up to five hundred kilograms of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.
 - f. The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.
 - g. The facility maintains records for three years following completion of each study that shows compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:
 - (1) The name, address, and identification number of the generator or sample collector of each waste sampled;
 - (2) The date the shipment was received;
 - (3) The quantity of waste accepted;

- (4) The quantity of "as received" waste in storage each day;
 - (5) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
 - (6) The date the treatability study was concluded; and
 - (7) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the identification number.
- h. The facility keeps, onsite, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.
 - i. The facility prepares and submits a report to the department by March fifteenth of each year that includes the following information for the previous calendar year:
 - (1) The name, address, and identification number of the facility conducting the treatability study;
 - (2) The types, by process, of treatability studies conducted;
 - (3) The names and addresses of persons for whom studies have been conducted, including their identification numbers;
 - (4) The total quantity of waste in storage each day;
 - (5) The quantity and type of waste subjected to treatability studies;
 - (6) When each treatability study was conducted; and
 - (7) The final disposition of residues and unused samples from each treatability study.
 - j. The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under section 33.1-24-02-03 and, if so, are subject to chapters 33.1-24-02 through 33.1-24-06, unless the residues and unused samples are returned to the sample originator under the subsection 5 of section 33.1-24-02-04 exemption.
 - k. The facility notifies the department by letter when the facility is no longer planning to conduct any treatability studies at the site.
7. **Polychlorinated biphenyl wastes regulated under Toxic Substance Control Act.** The disposal of polychlorinated biphenyl-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR 761 and that are hazardous only because they fail the test for the toxicity characteristic (hazardous waste codes D018 through D043 only) are exempt from regulation under this article, and the notification requirements.
8. **Dredged material that is not a hazardous waste.** Dredged material that is subject to the requirements of a permit that has been issued under section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344] or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413] is not a hazardous waste. For this subsection, the following definitions apply:
- a. The term dredged material has the same meaning as defined in 40 CFR 232.2.

- b. The term permit means:
 - (1) A permit issued by the United States army corps of engineers (corps) or an approved state under section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344];
 - (2) A permit issued by the corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C. 1413]; or
 - (3) In the case of corps civil work projects, the administrative equivalent of the permits referred to in paragraphs 1 and 2, as provided for in corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

- 9. **Carbon dioxide stream injected for geologic sequestration.** Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for class VI underground injection control wells, including the requirements in 40 CFR parts 144 and 146 of the underground injection control program of the Safe Drinking Water Act, are not a hazardous waste, provided the following conditions are met:
 - a. Transportation of the carbon dioxide stream must be in compliance with United States department of transportation requirements, including the pipeline safety laws [49 United States code 60101 et seq.] and regulations [49 CFR parts 190-199] of the United States department of transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 United States code 60105, as applicable;
 - b. Injection of the carbon dioxide stream must be in compliance with the applicable requirements for class VI underground injection control wells, including the applicable requirements in 40 CFR parts 144 and 146;
 - c. No hazardous wastes shall be mixed with, or otherwise coinjected with, the carbon dioxide stream; and
 - d. Certification statements:
 - (1) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under this subsection, must have an authorized representative (as defined in section 33.1-24-01-04) sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under subsection 9 of section 33.1-24-02-04 has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with (or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with) department of transportation requirements, including the pipeline safety laws [49 United States code 60101 et seq.] and regulations [49 CFR parts 190-199] of the United States department of transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 United States code 60105, as applicable, for injection into a well subject to the requirements for the class VI underground injection control program of the Safe Drinking Water Act.
 - (2) Any class VI underground injection control well owner or operator, who claims that a carbon dioxide stream is excluded under this subsection, must have an authorized representative (as defined in section 33.1-24-01-04) sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under subsection 9 of section 33.1-24-02-04 has not

been mixed with, or otherwise cojected with, hazardous waste at the underground injection control class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for underground injection class VI wells, including the applicable requirements in 40 CFR parts 144 and 146.

- (3) The signed certification statement must be kept onsite for no less than three years, and must be made available within seventy-two hours of a written request from the administrator, regional administrator, or the department, or their designee. The signed certification statement must be renewed every year that the exclusion is claimed, by having an authorized representative (as defined in section 33.1-24-01-04) annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement must also be readily accessible on the facility's publicly available website (if such website exists) as a public notification with the title of "carbon dioxide stream certification" at the time the exclusion is claimed.

10. Airbag wastes. Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulations under chapters 3 through 7 of article 33.1-24, and is not subject to the notification requirements of section 3010 of the Resource Conversation and Recovery Act provided that:

a. The airbag waste is accumulated in a quantity of no more than two hundred fifty airbag modules or airbag inflators, for no longer than one hundred eighty days;

b. The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste - Do Not Reuse";

c. The airbag waste is sent directly to either:

(1) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the national highway traffic safety administration; or

(2) A designated facility as defined in subsection 35 of section 33.1-24-01-04;

d. The transport of the airbag waste complies with all applicable United States department of transportation regulations in 49 CFR part 171 through 180 during transit;

e. The airbag waste handler maintains at the handler facility for no less than three years records of all offsite shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules and airbag inflators) received, and the date it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of department of transportation shipping papers, or electronic confirmations of receipt).

f. Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of chapter 33.1-24-03.

- g. Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the national highway traffic safety administration is considered sham recycling and is prohibited under subsection 7 of section 33.1-24-02-02.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-16; S.L. 2017, ch. 199, § 19

33.1-24-02-05. Special requirements for hazardous waste generated by ~~conditionally exempt~~ very small quantity generators.

1. A generator is a ~~conditionally exempt~~ very small quantity generator ~~in a calendar month if the generator generates no more than one hundred kilograms of hazardous waste in that month if it meets the category determination requirements described in section 33.1-24-03-03.~~
2. Except for those wastes identified in subsections 5, 6, 7, and 10, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under chapters 33.1-24-03 through 33.1-24-07, and the notification requirements, provided the generator complies with the requirements of subsections 6, 7, and 10.
3. When making the quantity determinations, the generator must include all hazardous waste that it generates, except hazardous waste that:
 - a. Is exempt from regulation under subsections 3 through 7 of section 33.1-24-02-04, subdivision c of subsection 1 of section 33.1-24-02-06, or subsection 1 of section 33.1-24-02-07;
 - b. Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in section 33.1-24-01-04;
 - c. Is recycled, without prior storage or accumulation, only in an onsite process subject to regulation under subdivision b of subsection 3 of section 33.1-24-02-06;
 - d. Is used oil managed under the requirements of subdivision d of subsection 1 of section 33.1-24-02-06 and sections 33.1-24-05-600 through 33.1-24-05-689;
 - e. Is spent lead-acid batteries managed under sections 33.1-24-05-235 through 33.1-24-05-249;
 - f. Is universal waste managed under subsection 5 of section 33.1-24-02-06 and sections 33.1-24-05-700 through 33.1-24-05-799; or
 - g. Is a hazardous waste that is an unused commercial chemical product (listed in sections 33.1-24-02-15 through 33.1-24-02-19, or exhibiting one or more characteristics in sections 33.1-24-02-10 through 33.1-24-02-14) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to section 33.1-24-03-74. For purposes of this subdivision, the term eligible academic entity shall have the meaning as defined in section 33.1-24-03-61.
4. In determining the quantity of hazardous waste generated, a generator need not include:
 - a. Hazardous waste when it is removed from onsite storage;
 - b. Hazardous waste produced by onsite treatment, including reclamation, of their hazardous waste, so long as the hazardous waste that is treated was counted once; or

- c. Spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been counted once.
5. If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under chapters 33.1-24-03 through 33.1-24-07, and the notification requirements.
- a. A total of one kilogram of acute hazardous waste listed in section 33.1-24-02-16, or subsection 5 of section 33.1-24-02-18.
 - b. A total of one hundred kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16, or subsection 5 of section 33.1-24-02-18. [Comment: "Full regulation" means those regulations applicable to generators of one thousand kilograms or greater of hazardous waste in a calendar month.]
6. In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than set forth in subdivisions a or b of subsection 5 to be excluded from full regulation under this section, the generator shall comply with the following requirements:
- a. Section 33.1-24-03-02;
 - b. The generator may accumulate acute hazardous waste onsite. If the generator accumulates at any time acute hazardous waste in quantities greater than those set forth in subdivision a or b of subsection 5, all of those accumulated wastes are subject to regulation under chapters 33.1-24-03 through 33.1-24-07 and the applicable notification requirements. The time period of subsection 1 of section 33.1-24-03-12, for accumulation of wastes onsite, begins when the accumulated wastes exceed the applicable exclusion limit;
 - c. A ~~conditionally exempt~~very small quantity generator may either treat or dispose of the generator's acute hazardous waste in an onsite facility or ensure delivery to an offsite storage, treatment, or disposal facility, either of which, if located in the United States, is:
 - (1) Permitted under chapter 33.1-24-06;
 - (2) In interim status under North Dakota Century Code section 23.1-04-08;
 - (3) Authorized to manage hazardous waste by a state;
 - (4) Permitted, licensed, or registered by a state to manage municipal solid waste, and if managed in a municipal solid waste landfill subject to article 33.1-20 or other regulation equivalent to 40 CFR part 258;
 - (5) Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste landfill after January 1, 1998, is subject to article 33.1-20 or other regulation equivalent to sections 5 through 30 of 40 CFR part 257;
 - (6) A facility which:
 - (a) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
 - (b) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

- (7) For universal waste managed under sections 33.1-24-05-700 through 33.1-24-05-799, a universal waste handler or destination facility subject to the requirements of sections 33.1-24-05-700 through 33.1-24-05-799.

[NOTE: Although provisions of this subsection exclude certain generators from full regulation under this section, all applicable provisions of article 33.1-20, North Dakota solid waste management rules apply.]

7. In order for hazardous waste generated by a ~~conditionally exempt~~very small quantity generator in quantities of one hundred kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator shall comply with the following requirements:
 - a. Section 33.1-24-03-02;
 - b. The ~~conditionally exempt~~very small quantity generator may accumulate hazardous waste onsite. If the generator accumulates at any time one thousand kilograms or greater of the generator's hazardous waste, all of those accumulated wastes are subject to regulation under special provisions of chapter 33.1-24-03 applicable to generators of greater than one hundred kilograms and less than one thousand kilograms of hazardous waste in a calendar month as well as the requirements of chapters 33.1-24-03 through 33.1-24-07 and the applicable notification requirements. The time period of subsection 4 of section 33.1-24-03-12 for accumulation of wastes onsite begins for a ~~conditionally exempt~~very small quantity generator when the accumulated wastes equal or exceed one thousand kilograms;
 - c. A ~~conditionally exempt~~very small quantity generator may either treat or dispose of the generator's hazardous waste in an onsite facility, or ensure delivery to an offsite storage, treatment, or disposal facility, either of which, if located in the United States, is:
 - (1) Permitted under chapter 33.1-24-06;
 - (2) In interim status under North Dakota Century Code section 23.1-04-08;
 - (3) Authorized to manage hazardous waste by a state;
 - (4) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill subject to article 33.1-20 or other regulation equivalent to 40 CFR part 258;
 - (5) Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit after January 1, 1998, is subject to article 33.1-20 or other regulation equivalent to sections 5 through 30 of 40 CFR part 257;
 - (6) A facility which:
 - (a) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
 - (b) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
 - (7) For universal waste managed under sections 33.1-24-05-700 through 33.1-24-05-799, a universal waste handler or destination facility subject to the requirements of sections 33.1-24-05-700 through 33.1-24-05-799.

[NOTE: Although provisions of this subsection exclude certain generators from full regulation under this section, all applicable provisions of article 33.1-20, North Dakota solid waste management rules apply.]

8. Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14.
9. If any person mixes a solid waste with a hazardous waste that exceeds the quantity exclusion level of this section, the mixture is subject to full regulation.
10. If a ~~conditionally exempt~~very small quantity generator's wastes are mixed with used oil, the mixture is subject to sections 33.1-24-05-600 through 33.1-24-05-689. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-02-06. Requirements for recyclable materials and universal waste.

1. The following requirements for recyclable materials are:
 - a. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections 2 and 3, except for the materials listed in subdivisions b and c. Hazardous wastes that are recycled will be known as "recyclable materials".
 - b. The following recyclable materials are not subject to the requirements of this section but are regulated under sections 33.1-24-05-201 through 33.1-24-05-209, 33.1-24-05-230 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, 33.1-24-05-820 through 33.1-24-05-929 and all applicable provisions in sections 33.1-24-05-250 through 33.1-24-05-299 and chapters 33.1-24-06 and 33.1-24-07:
 - (1) Recyclable materials used in a manner constituting disposal (sections 33.1-24-05-201 through 33.1-24-05-209).
 - (2) Hazardous wastes burned (as defined in subsection 1 of section 33.1-24-05-525) in boilers and industrial furnaces that are not regulated under sections 33.1-24-05-144 through 33.1-24-05-151 (sections 33.1-24-05-525 through 33.1-24-05-549).
 - (3) Recyclable materials from which precious metals are reclaimed (sections 33.1-24-05-230 through 33.1-4-05-234).
 - (4) Spent lead-acid batteries that are being reclaimed (sections 33.1-24-05-235 through 33.1-24-05-249).
 - c. The following recyclable materials are not subject to regulation under chapters 33.1-24-03 through 33.1-24-07 and are not subject to notification requirements:
 - (1) Industrial ethyl alcohol that is reclaimed except ~~that, unless provided otherwise in an international agreement as specified in section 33.1-24-03-25:~~
 - ~~(a) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements~~

~~applicable to a primary exporter in section 33.1-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33.1-24-03-23, and section 33.1-24-03-24, export such materials only upon consent of the receiving country and in conformance with the environmental protection agency acknowledgment of consent as defined in sections 33.1-24-03-17 through 33.1-24-03-25, and provide a copy of the environmental protection agency acknowledgment of consent to the shipment to the transporter transporting the shipment for export.~~

- ~~(b) Transporters transporting a shipment for export may not accept a shipment if the transporter knows the shipment does not conform to the environmental protection agency acknowledgment of consent, shall ensure that a copy of the environmental protection agency acknowledgment of consent accompanies the shipment, and shall ensure that it is delivered to the facility designated by the person initiating the shipment.~~ that exports and imports of such recyclable materials must comply with the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.
- (2) Scrap metal that is not excluded under subdivision m of subsection 1 of section 33.1-24-02-04.
- (3) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility, if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, when such recovered oil is already excluded under subdivision l of subsection 1 of section 33.1-24-02-04).
- (4) Subdivision c also applies to the following:
- (a) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, when such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under section 33.1-24-05-611 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
 - (b) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, when such hazardous wastes are reintroduced into a refining process after a point in which contaminants are removed, so long as the fuel meets the used oil fuel specification under section 33.1-24-05-611; and
 - (c) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under section 33.1-24-05-611.
- d. Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of chapters 33.1-24-01 through 33.1-24-04, and sections 33.1-24-05-01 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-1149, and subsection 5 of section 33.1-24-06-16, but is regulated under sections 33.1-24-05-600 through 33.1-24-05-689. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the

purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

- e. Hazardous waste that is exported ~~to~~ or imported ~~from designated member countries of the organization for economic cooperation and development (as defined in subdivision a of subsection 1 of section 33.1-24-03-25)~~ for the purpose of recovery is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59, ~~if it is subject to either the manifesting requirements of chapter 33.1-24-03 or to the universal waste requirements of sections 33.1-24-05-700 through 33.1-24-05-799.~~
2. Generators and transporters of recyclable materials are subject to the applicable requirements of chapters 33.1-24-03 and 33.1-24-04 and the notification requirements, except as provided in subsection 1.
 3. Owners or operators of facilities that:
 - a. Store recyclable materials before they are recycled are regulated under all applicable provisions of sections 33.1-24-05-01 through 33.1-24-05-143, sections 33.1-24-05-191 through 33.1-24-05-299, sections 33.1-24-05-400 through 33.1-24-05-474, 33.1-24-05-525 through 33.1-24-05-549, sections 33.1-24-05-820 through 33.1-24-05-1149, and chapters 33.1-24-06 and 33.1-24-07 and the notification requirements, under section 33.1-24-03-03, except as provided in subsection 1. The recycling process itself is exempt from regulation except as provided in subsection 4 of section 33.1-24-02-06.
 - b. Recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection 1:
 - (1) Notification requirements;
 - (2) Sections 33.1-24-05-38 and 33.1-24-05-39 (dealing with the use of the manifest and manifest discrepancies); ~~and~~
 - (3) Subsection 4 of section 33.1-24-02-06; and
 - (4) The owner or operator shall complete and submit environmental protection agency form 8700-13 A/B to the regional administrator by March first of the following even-numbered year and must cover activities during the previous year.
 4. Owners or operators of facilities subject to the hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of sections 33.1-24-05-400 through 33.1-24-05-449, subsection 5 of section 33.1-24-06-16, or sections 33.1-24-05-950 through 33.1-24-05-1149.
 5. The wastes listed in this subsection are exempt from regulation under chapters 33.1-24-03 through 33.1-24-06 except as specified in sections 33.1-24-05-700 through 33.1-24-05-799 and, therefore are not fully regulated as hazardous waste. The wastes listed in this subsection are subject to regulation under sections 33.1-24-05-700 through 33.1-24-05-799:
 - a. Batteries as described in section 33.1-24-05-702;
 - b. Pesticides as described in section 33.1-24-05-703;
 - c. Mercury-containing equipment as described in section 33.1-24-05-704; and
 - d. Lamps as described in section 33.1-24-05-705.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-02-18. Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in paragraph 1 of subdivision b of subsection 1 of section 33.1-24-02-02, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

1. Any commercial chemical product, manufacturing chemical intermediate, or any mixture of the chemicals having the generic name listed in subsection 5 or 6.
2. Any off-specification commercial chemical product, manufacturing chemical intermediate, or any mixture of the chemicals which, if it met specifications, would have the generic name listed in subsection 5 or 6.
3. Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product, manufacturing chemical intermediate, or any mixture of the chemicals having the generic name listed in subsection 5 or 6, unless the container is empty as defined in subsections 3, 4, and 5 of section 33.1-24-02-07.

NOTE: Unless the residue is being beneficially used or legitimately recycled or reclaimed; or being accumulated, stored, transported, or treated prior to such use, reuse, recycling, or reclamation, the department considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate reuse of the residue would be when the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be when the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

4. Any residue or contaminated soil, water, or other debris, resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product, manufacturing chemical intermediate, or mixture of the chemicals having the generic name listed in subsection 5 or 6, or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any off-specification chemical product, manufacturing chemical intermediate, or mixture of the chemicals, which, if it met specifications would have the generic name listed in subsection 5 or 6. [Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, which consists of the commercially pure grade of the chemical, any technical grades of the chemical, that are produced or marketed, and all formulations containing one or more of the chemicals having the generic name listed in subsection 5 or 6 as active ingredients. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in subsection 5 or 6. Where a manufacturing process is deemed to be a hazardous waste because it contains a substance listed in subsection 5 or 6, such wastes will be listed in either section 33.1-24-02-16 or 33.1-24-02-17 or will be identified as a hazardous waste by the characteristics set forth in sections 33.1-24-02-10 through 33.1-24-02-14.]
5. The commercial chemical products, manufacturing chemical intermediates, ~~or off-specification commercial chemical products or manufacturing chemical intermediates, or mixtures of the chemicals~~ referred to in subsections 1 through 4, are identified as acute hazardous wastes (H)

and are subject to the small quantity exclusion defined in subsection 5 of section 33.1-24-02-05.

Comment: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (toxicity), and R (reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by hazardous waste number.

These wastes and their corresponding hazardous waste numbers are:

Hazardous Waste No.	Chemical Abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P203	1646-88-4	Aldicarb sulfone
P070	116-06-3	Aldicarb
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R, T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H ₃ AsO ₄
P012	1327-53-3	Arsenic oxide As ₂ O ₃
P011	1303-28-2	Arsenic oxide As ₂ O ₅
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
P046	122-09-8	Benzeneethanamine, alpha, alpha-dimethyl-
P014	108-98-5	Benzenethiol
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate

Hazardous Waste No.	Chemical Abstracts No.	Substance
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)
P001	181-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium powder
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl] oxime
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN) ₂
P189	55285-14-8	Carbamic acid, [(dibutylamino)- thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P191	644-64-4	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P127	1563-66-2	Carbofuran
P022	75-15-0	Carbon disulfide
P095	75-44-5	Carbonic dichloride
P189	55285-14-8	Carbosulfan
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P027	542-76-7	3-Chloropropionitrile
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P202	64-00-6	m-Cumenyl methylcarbamate
P030	Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P016	542-88-1	Dichloromethyl ether
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P038	692-42-2	Diethylarsine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P004	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-

Hazardous Waste No.	Chemical Abstracts No.	Substance
P060	465-73-6	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2alpha,3beta,6beta,6aalpha,7beta,7aalpha)-
P051	172-20-8	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-, & metabolites
P044	60-51-5	Dimethoate
P046	122-09-8	alpha, alpha-Dimethylphenthylamine
P191	644-64-4	Dimetilan
P047	1534-52-1	4,6-Dinitro-o-cresol & salts
P048	51-28-5	2,4-Dinitrophenol
P020	88-85-7	Dinoseb
P085	152-16-9	Diphosphoramide, octamethyl-
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P039	298-04-4	Disulfoton
P049	541-53-7	Dithiobiuret
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl]oxime
P050	115-29-7	Endosulfan
P088	145-73-3	Endothall
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P042	51-43-4	Epinephrine
P031	460-19-5	Ethanedinitrile
P066	16752-77-5	Ethanimidothioic acid, N-[[[(methylamino)carbonyl]oxy]-, methyl ester
P194	23135-22-0	Ethanimidothioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester
P101	107-12-0	Ethyl cyanide
P054	151-56-4	Ethyleneimine
P097	52-85-7	Famphur
P056	7782-41-4	Fluorine
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Fluoroacetic acid, sodium salt
P198	23422-53-9	Formetanate hydrochloride
P197	17702-57-7	Formparanate
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P059	76-44-8	Heptachlor
P062	757-58-4	Hexaethyl tetraphosphate
P116	79-19-6	Hydrazinecarbothioamide
P068	60-34-4	Hydrazine, methyl-
P063	74-90-8	Hydrocyanic acid

Hazardous Waste No.	Chemical Abstracts No.	Substance
P063	74-90-8	Hydrogen cyanide
P096	7803-51-2	Hydrogen phosphide
P060	465-73-6	Isodrin
P192	119-38-0	Isolan
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate
P092	62-38-4	Mercury, (acetato-O)phenyl-
P065	628-86-4	Mercury fulminate (R,T)
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P064	624-83-9	Methane, isocyanato-
P016	542-88-1	Methane, oxybis[chloro-
P112	509-14-8	Methane, tetranitro- (R)
P118	75-70-7	Methanethiol, trichloro-
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-[3-[(methylamino) carbonyl]oxy]phenyl]-, monohydrochloride
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[(methylamino)carbonyl]oxy]phenyl]-
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P199	2032-65-7	Methiocarb
P066	16752-77-5	Methomyl
P068	60-34-4	Methyl hydrazine
P064	624-83-9	Methyl isocyanate
P069	75-86-5	2-Methylactonitrile
P071	298-00-0	Methyl parathion
P190	1129-41-5	Metolcarb
P128	315-18-4	Mexacarbate
P072	86-88-4	alpha-Naphthylthiourea
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO) ₄ , (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN) ₂
P075	154-11-5	Nicotine and salts
P076	10102-43-9	Nitric oxide
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P076	10102-43-9	Nitrogen oxide NO
P078	10102-44-0	Nitrogen oxide NO ₂
P081	55-63-0	Nitroglycerine (R)

Hazardous Waste No.	Chemical Abstracts No.	Substance
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P085	152-16-9	Octamethylpyrophosphoramidate
P087	20816-12-0	Osmium oxide OsO ₄ , (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P194	23135-22-0	Oxamyl
P089	56-38-2	Parathion
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P048	51-28-5	Phenol, 2,4-dinitro-
P047	1534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methylcarbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methylcarbamate
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P094	298-02-2	Phorate
P095	75-44-5	Phosgene
P096	7803-51-2	Phosphine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester
P071	298-00-0	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester
P204	57-47-6	Physostigmine
P188	57-64-7	Physostigmine salicylate
P110	78-00-2	Plumbane, tetraethyl-
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Potassium silver cyanide
P201	2631-37-0	Promecarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P203	1646-88-4	Propanal, 2-methyl-2-(methyl sulfonyl)-, O-[(methylamino)carbonyl] oxime
P101	107-12-0	Propanenitrile

Hazardous Waste No.	Chemical Abstracts No.	Substance
P027	542-76-7	Propanenitrile, 3-chloro-
P069	75-86-5	Propanenitrile, 2-hydroxy-2 methyl-
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P017	598-31-2	2-Propanone, 1-bromo-
P102	107-19-7	Propargyl alcohol
P003	107-02-8	2-Propenal
P005	107-18-6	2-Propen-1-ol
P067	75-55-8	1,2-Propylenimine
P102	107-19-7	2-Propyn-1-ol
P008	504-24-5	Pyridianamine
P075	154-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
P204	57-47-6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	157-24-9	Strychnidin-10-one, & salts
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P108	157-24-9	Strychnine & salts
P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P109	3689-24-5	Tetraethyldithiopyrophosphate
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Tetranitromethane (R)
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl_2O_3
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Thallium(I) sulfate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P045	39196-18-4	Thiofanox
P049	541-53-7	Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$
P014	108-98-5	Thiophenol
P116	79-19-6	Thiosemicarbazide
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P072	86-88-4	Thiourea, 1-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-

Hazardous Waste No.	Chemical Abstracts No.	Substance
P185	26419-73-8	Tirpate
P123	80201-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V ₂ O ₅
P120	1314-62-1	Vanadium pentoxide
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P001	181-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN) ₂
P122	1314-84-7	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10% (R,T)
P205	137-30-4	Ziram.
P001	181-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P001	181-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P003	107-02-8	2-Propenal
P004	309-00-2	Aldrin
P004	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-
P005	107-18-6	Allyl alcohol
P005	107-18-6	2-Propen-1-ol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P008	504-24-5	4-Aminopyridine
P008	504-24-5	4-Pyridinamine
P009	131-74-8	Ammonium picrate (R)
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P010	7778-39-4	Arsenic acid H ₃ AsO ₄
P011	1303-28-2	Arsenic oxide As ₂ O ₅
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic oxide As ₂ O ₃
P012	1327-53-3	Arsenic trioxide
P013	542-62-1	Barium cyanide
P014	108-98-5	Benzenethiol
P014	108-98-5	Thiophenol
P015	7440-41-7	Beryllium powder
P016	542-88-1	Dichloromethyl ether

Hazardous Waste No.	Chemical Abstracts No.	Substance
P016	542-88-1	Methane, oxybis[chloro-
P017	598-31-2	Bromoacetone
P017	598-31-2	2-Propanone, 1-bromo-
P018	357-57-3	Brucine
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P020	88-85-7	Dinoseb
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN) ₂
P022	75-15-0	Carbon disulfide
P023	107-20-0	Acetaldehyde, chloro-
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	Benzenamine, 4-chloro-
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P026	5344-82-1	Thiourea, (2-chlorophenyl)
P027	542-76-7	3-Chloropropionitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P028	100-44-7	Benzene, (chloromethyl)-
P028	100-44-7	Benzyl chloride
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P030	Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P031	460-19-5	Ethanedinitrile
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P036	696-28-6	Arsonous dichloride, phenyl-
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-
P038	692-42-2	Arsine, diethyl-
P038	692-42-2	Diethylarsine
P039	298-04-4	Disulfoton
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P041	311-45-5	Diethyl-p-nitrophenyl phosphate

Hazardous Waste No.	Chemical Abstracts No.	Substance
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
P042	51-43-4	Epinephrine
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P044	60-51-5	Dimethoate
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1- (methylthio)-, O-[(methylamino)carbonyl] oxime
P045	39196-18-4	Thiofanox
P046	122-09-8	Benzeneethanamine, alpha, alpha-dimethyl-
P046	122-09-8	Alpha, alpha-Dimethylphenethylamine
P047	1534-52-1	4,6-Dinitro-o-cresol, & salts
P047	1534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P048	51-28-5	2,4-Dinitrophenol
P048	51-28-5	Phenol, 2,4-dinitro-
P049	541-53-7	Dithiobiuret
P049	541-53-7	Thioimidodicarbonic diamide [(H ₂ N)C(S)] ₂ NH
P050	115-29-7	Endosulfan
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P051	172-20-8	2,7:3,6-Dimethanonaphth [2,3-b]oxirene , 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-, & metabolites
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P054	151-56-4	Aziridine
P054	151-56-4	Ethyleneimine
P056	7782-41-4	Fluorine
P057	640-19-7	Acetamide, 2-fluoro-
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P058	62-74-8	Fluoroacetic acid, sodium salt
P059	76-44-8	Heptachlor
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P060	465-73-6	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
P060	465-73-6	Isodrin
P062	757-58-4	Hexaethyl tetraphosphate
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P064	624-83-9	Methane, isocyanato-

Hazardous Waste No.	Chemical Abstracts No.	Substance
P064	624-83-9	Methyl isocyanate
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P065	628-86-4	Mercury fulminate (R,T)
P066	16752-77-5	Ethanimidothioic acid, [[N-(methylamino)carbonyl]oxy]-, methyl ester
P066	16752-77-5	Methomyl
P067	75-55-8	Aziridine, 2-methyl-
P067	75-55-8	1,2-Propylenimine
P068	60-34-4	Hydrazine, methyl-
P068	60-34-4	Methyl hydrazine
P069	75-86-5	2-Methylacetonitrile
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P070	116-06-3	Aldicarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P071	298-00-0	Methyl parathion
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P072	86-88-4	alpha-Naphthylthiourea
P072	86-88-4	Thiourea, 1-naphthalenyl-
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO) ₄ , (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN) ₂
P075	154-11-5	Nicotine, & salts
P075	154-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
P076	10102-43-9	Nitric oxide
P076	10102-43-9	Nitrogen oxide NO
P077	100-01-6	Benzenamine, 4-nitro-
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P078	10102-44-0	Nitrogen oxide NO ₂
P081	55-63-0	Nitroglycerine (R)
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P085	152-16-9	Diphosphoramidate, octamethyl-
P085	152-16-9	Octamethylpyrophosphoramidate
P087	20816-12-0	Osmium oxide OsO ₄ , (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	Endothall
P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid

Hazardous Waste No.	Chemical Abstracts No.	Substance
P089	56-38-2	Parathion
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P092	62-38-4	Mercury, (acetato-O)phenyl-
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P093	103-85-5	Thiourea, phenyl-
P094	298-02-2	Phorate
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
P095	75-44-5	Carbonic dichloride
P095	75-44-5	Phosgene
P096	7803-51-2	Hydrogen phosphide
P096	7803-51-2	Phosphine
P097	52-85-7	Famphur
P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P099	506-61-6	Potassium silver cyanide
P101	107-12-0	Ethyl cyanide
P101	107-12-0	Propanenitrile
P102	107-19-7	Propargyl alcohol
P102	107-19-7	2-Propyn-1-ol
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	157-24-9	Strychnidin-10-one, & salts
P108	157-24-9	Strychnine, & salts
P109	3689-24-5	Tetraethyldithiopyrophosphate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P110	78-00-2	Plumbane, tetraethyl-
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Methane, tetranitro- (R)
P112	509-14-8	Tetranitromethane (R)
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl_2O_3
P114	12039-52-0	Selenious acid, dithallium(1+) salt

Hazardous Waste No.	Chemical Abstracts No.	Substance
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P115	7446-18-6	Thallium(I) sulfate
P116	79-19-6	Hydrazinecarbothioamide
P116	79-19-6	Thiosemicarbazide
P118	75-70-7	Methanethiol, trichloro-
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Ammonium vanadate
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V ₂ O ₅
P120	1314-62-1	Vanadium pentoxide
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN) ₂
P122	1314-84-7	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10% (R,T)
P123	8001-35-2	Toxaphene
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate
P127	1563-66-2	Carbofuran
P128	315-18-4	Mexacarbate
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)-carbonyl] oxime
P185	26419-73-8	Tirpate
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1)
P188	57-64-7	Physostigmine salicylate
P189	55285-14-8	Carbamic acid, [(dibutylamino)-thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P189	55285-14-8	Carbosulfan
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P190	1129-41-5	Metolcarb
P191	644-64-4	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester
P191	644-64-4	Dimetilan
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P192	119-38-0	Isolan
P194	23135-22-0	Ethanimidthioic acid, 2-(dimethylamino)-N-[[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester
P194	23135-22-0	Oxamyl
P196	15339-36-3	Manganese, bis(dimethylcarbamo-dithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate
P197	17702-57-7	Formparanate
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[[(methylamino)carbonyl]oxy]phenyl]-

Hazardous Waste No.	Chemical Abstracts No.	Substance
P198	23422-53-9	Formetanate hydrochloride
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-[3-[[[(methylamino)-carbonyl]oxy]phenyl]-monohydrochloride
P199	2032-65-7	Methiocarb
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methylcarbamate
P201	2631-37-0	Promecarb
P202	64-00-6	m-Cumenyl methylcarbamate
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methylcarbamate
P203	1646-88-4	Aldicarb sulfone
P203	1646-88-4	Propanal, 2-methyl-2-(methyl sulfonyl)-, O-[(methylamino)carbonyl] oxime
P204	57-47-6	Physostigmine
P204	57-47-6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P205	137-30-4	Ziram

¹CAS number given for parent compound only.

6. The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products, ~~or mixtures of the chemicals~~ referred to in subsections 1 through 4, are identified as toxic wastes (T) unless otherwise designated ~~and are subject to the small quantity exclusion defined in subsections 1 and 7 of section 33.1-24-02-05.~~

Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (toxicity), R (reactivity), I (ignitability), and C (corrosivity). Absence of a letter indicates that the compound is only listed for toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by hazardous waste number.

These wastes and their corresponding hazardous waste numbers are:

Hazardous Waste No.	Chemical Abstracts No.	Substance
U394	30558-43-1	A2213
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U240	¹ 94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U112	141-78-6	Acetic acid, ethyl ester (I)
U144	301-04-2	Acetic acid, lead(2+) salt
U214	563-68-8	Acetic acid, thallium(1+) salt
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
U002	67-64-1	Acetone (I)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl- [1aS-(1aalpha,8beta,8aalpha,8balpha)]-
U280	101-27-9	Barban
U278	22781-23-3	Bendiocarb
U364	22961-82-6	Bendiocarb phenol
U271	17804-35-2	Benomyl
U157	56-49-5	Benz[j][aceanthrylene, 1,2-dihydro-3-methyl-
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzal chloride
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U018	56-55-3	Benz[a]anthracene
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U328	95-53-4	Benzenamine, 2-methyl-
U353	106-49-0	Benzenamine, 4-methyl-
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U019	71-43-2	Benzene (I,T)
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U037	108-90-7	Benzene, chloro-
U221	25376-45-8	Benzenediamine, ar-methyl-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester

Hazardous Waste No.	Chemical Abstracts No.	Substance
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U070	95-50-1	Benzene, 1,2-dichloro-
U071	541-73-1	Benzene, 1,3-dichloro-
U072	106-46-7	Benzene, 1,4-dichloro-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
U017	98-87-3	Benzene, (dichloromethyl)-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	1330-20-7	Benzene, dimethyl- (I)
U201	108-46-3	1,3-Benzenediol
U127	118-74-1	Benzene, hexachloro-
U056	110-82-7	Benzene, hexahydro- (I)
U220	108-88-3	Benzene, methyl-
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U055	98-82-8	Benzene, (1-methylethyl)- (I)
U169	98-95-3	Benzene, nitro-
U183	608-93-5	Benzene, pentachloro-
U185	82-68-8	Benzene, pentachloronitro-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U023	98-07-7	Benzene, (trichloromethyl)-
U234	99-35-4	Benzene, 1,3,5-trinitro-
U021	92-87-5	Benzidine
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methylcarbamate
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U064	189-55-9	Benzo[rs]pentaphene
U248	181-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl butyl)-, & salts, when present at concentrations of 0.3% or less
U022	50-32-8	Benzo[a]pyrene
U197	106-51-4	p-Benzoquinone
U023	98-07-7	Benzotrichloride (C,R,T)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U085	1464-53-5	2,2'-Bioxirane
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
U225	75-25-2	Bromoform
U030	101-55-3	4-Bromophenyl phenyl ether
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U031	71-36-3	1-Butanol (I)
U159	78-93-3	2-Butanone (I,T)
U160	1338-23-4	2-Butanone peroxide (R,T)
U053	4170-30-3	2-Butenal
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a -tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U031	71-36-3	n-Butyl alcohol (I)
U136	75-60-5	Cacodylic acid
U032	13765-19-0	Calcium chromate
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U271	17804-35-2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U238	51-79-6	Carbamic acid, ethyl ester
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U409	23564-05-8	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester
U097	79-44-7	Carbamic chloride, dimethyl-
U114	111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U279	63-25-2	Carbaryl
U372	10605-21-7	Carbendazim
U367	1563-38-8	Carbofuran phenol
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U033	353-50-4	Carbon difluoride
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U033	353-50-4	Carbon oxyfluoride (R,T)
U211	56-23-5	Carbon tetrachloride
U034	75-87-6	Chloral
U035	305-03-3	Chlorambucil

Hazardous Waste No.	Chemical Abstracts No.	Substance
U036	57-74-9	Chlordane, alpha & gamma isomers
U026	494-03-1	Chlornaphazine
U037	108-90-7	Chlorobenzene
U038	510-15-6	Chlorobenzilate
U039	59-50-7	4-Chloro-m-cresol
U042	110-75-8	2-Chloroethyl vinyl ether
U044	67-66-3	Chloroform
U046	107-30-2	Chloromethyl methyl ether
U047	91-58-7	beta-Chloronaphthalene
U048	95-57-8	o-Chlorophenol
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U032	13765-19-0	Chromic acid H ₂ CrO ₄ , calcium salt
U050	218-01-9	Chrysene
U051	Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Cumene (I)
U246	506-68-3	Cyanogen bromide (CN)Br
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U056	110-82-7	Cyclohexane (I)
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)
U057	108-94-1	Cyclohexanone (I)
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U058	50-18-0	Cyclophosphamide
U240	194-75-7	2,4-D, salts & esters
U059	20830-81-3	Daunomycin
U060	72-54-8	DDD
U061	50-29-3	DDT
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-4	1,1-Dichloroethylene

Hazardous Waste No.	Chemical Abstracts No.	Substance
U079	156-60-5	1,2-Dichloroethylene
U025	111-44-4	Dichloroethyl ether
U027	108-60-1	Dichloroisopropyl ether
U024	111-91-1	Dichloromethoxy ethane
U081	120-83-2	2,4-Dichlorophenol
U082	87-65-0	2,6-Dichlorophenol
U084	542-75-6	1,3-Dichloropropene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U395	5952-26-1	Diethylene glycol, dicarbamate
U108	123-91-1	1,4-Diethyleneoxide
U028	117-81-7	Diethylhexyl phthalate
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U090	94-58-6	Dihydrosafrole
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	7,12-Dimethylbenz[a]anthracene
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U099	540-73-8	1,2-Dimethylhydrazine
U101	105-67-9	2,4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U404	121-44-8	Ethanamine, N,N-diethyl-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis- (I)
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide
U226	71-55-6	Ethane, 1,1,1-trichloro-
U227	79-00-5	Ethane, 1,1,2-trichloro-
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.
U410	59669-26-0	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U359	110-80-5	Ethanol, 2-ethoxy-
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro-
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U238	51-79-6	Ethyl carbamate (urethane)
U117	60-29-7	Ethyl ether (I)
U114	111-54-6	Ethylenebisdithiocarbamic acid, salts & esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)
U116	96-45-7	Ethylenethiourea
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U124	110-00-9	Furan (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U147	108-31-6	2,5-Furandione
U213	109-99-9	Furan, tetrahydro- (I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[[(methylnitrosoamino) carbonyl]amino]-
U126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H ₂ S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U190	85-44-9	1,3-Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide

Hazardous Waste No.	Chemical Abstracts No.	Substance
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-9	Methane, bromo-
U045	74-87-3	Methane, chloro- (I,T)
U046	107-30-2	Methane, chloromethoxy-
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U138	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I,T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide
U186	504-60-9	1-Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U226	71-55-6	Methyl chloroform
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I,T)
U161	108-10-1	4-Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil

Hazardous Waste No.	Chemical Abstracts No.	Substance
U010	50-07-7	Mitomycin C
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-7	1-Naphthalenamine
U168	91-59-8	2-Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U166	130-15-4	1,4-Naphthalenedione
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'diyl)bis(azo)]bis[5-amino-4-hydroxy]-, tetrasodium salt
U279	63-25-2	1-Naphthalenol, methylcarbamate
U166	130-15-4	1,4-Naphthoquinone
U167	134-2-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium(1+) salt
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U171	79-46-9	2-Nitropropane (I,T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-8	5-Nitro-O-toluidine
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U115	75-21-8	Oxirane (I,T)
U126	765-34-4	Oxiranecarboxyaldehyde
U041	106-89-8	Oxirane, (chloromethyl)-
U182	123-63-7	Paraldehyde
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Pentachloroethane
U185	82-68-8	Pentachloronitrobenzene (PCNB)
See F027	87-86-5	Pentachlorophenol
U161	108-10-1	Pentanol, 4-methyl-
U186	504-60-9	1,3-Pentadiene (I)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U048	95-57-8	Phenol, 2-chloro-
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	Phenol, 2,6-dichloro-
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U101	105-67-9	Phenol, 2,4-dimethyl-
U052	1319-77-3	Phenol, methyl-
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U170	100-02-7	Phenol, 4-nitro-
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U189	1314-80-3	Phosphorus sulfide (R)
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U179	100-75-4	Piperidine, 1-nitroso-
U192	23950-58-5	Pronamide
U194	107-10-8	1-Propanamine (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U110	142-84-7	1-Propanamine, N-propyl- (I)
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U083	78-87-5	Propane, 1,2-dichloro-
U149	109-77-3	Propanedinitrile
U171	79-46-9	Propane, 2-nitro- (I,T)
U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-
U193	1120-71-4	1,3-Propane sultone
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U002	67-64-1	2-Propanone (I)
U007	79-06-1	2-Propenamide
U084	542-75-6	1-Propene, 1,3-dichloro-
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	107-13-1	2-Propenenitrile

Hazardous Waste No.	Chemical Abstracts No.	Substance
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U008	79-10-7	2-Propenoic acid (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U373	122-42-9	Propham
U411	114-26-1	Propoxur
U194	107-10-8	n-Propylamine (I,T)
U083	78-87-5	Propylene dichloride
U387	52888-80-9	Prosulfocarb
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U196	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl-
U237	66-75-1	2,4(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U164	56-04-2	4-(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS ₂ (R,T)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex (2,4,5-TP)
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-5	2,4,5-T
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Thioacetamide

Hazardous Waste No.	Chemical Abstracts No.	Substance
U410	59669-26-0	Thiodicarb
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide [(H ₂ N)C(S)] ₂ S ₂ , tetramethyl-
U409	23564-05-8	Thiophanate-methyl
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4	o-Toluidine
U353	106-49-0	p-Toluidine
U222	636-21-5	o-Toluidine hydrochloride
U389	2303-17-5	Triallate
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U408	118-79-6	2,4,6-Tribromophenol
U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol
U404	121-44-8	Triethylamine
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris (2,3-dibromopropyl) phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil mustard
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-
U043	75-01-4	Vinyl chloride
U248	181-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U249	1314-84-7	Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10% or less
U001	75-07-0	Acetaldehyde (I)
U001	75-07-0	Ethanal (I)
U002	67-64-1	Acetone (I)
U002	67-64-1	2-Propanone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone

Hazardous Waste No.	Chemical Abstracts No.	Substance
U004	98-86-2	Ethanone, 1-phenyl-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U007	79-06-1	2-Propenamamide
U008	79-10-7	Acrylic acid (I)
U008	79-10-7	2-Propenoic acid (I)
U009	107-13-1	Acrylonitrile
U009	107-13-1	2-Propenenitrile
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[aminocarbonyl]oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl- [1aS-(1aalpha,8beta,8aalpha,8balpha)]-
U010	50-07-7	Mitomycin C
U011	61-82-5	Amitrole
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U012	62-53-3	Aniline (I,T)
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Auramine
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-
U015	115-02-6	Azaserine
U015	115-02-6	L-Serine, diazoacetate (ester)
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzalchloride
U017	98-87-3	Benzene, (dichloromethyl)-
U018	56-55-3	Benz[a]anthracene
U019	71-43-2	Benzene (I,T)
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U021	92-87-5	Benzidine
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U022	50-32-8	Benzo[a]pyrene
U023	98-07-7	Benzene, (trichloromethyl)-
U023	98-07-7	Benzotrichloride (C,R,T)
U024	111-91-1	Dichloromethoxy ethane
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U025	111-44-4	Dichloroethyl ether
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U026	494-03-1	Chlornaphazin
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U027	108-60-1	Dichloroisopropyl ether
U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U028	117-81-7	Diethylhexyl phthalate
U029	74-83-9	Methane, bromo-
U029	74-83-9	Methyl bromide
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U030	101-55-3	4-Bromophenyl phenyl ether
U031	71-36-3	1-Butanol (I)
U031	71-36-3	n-Butyl alcohol (I)
U032	13765-19-0	Calcium chromate
U032	13765-19-0	Chromic acid H ₂ CrO ₄ , calcium salt
U033	353-50-4	Carbonic difluoride
U033	353-50-4	Carbon oxyfluoride (R,T)
U034	75-87-6	Acetaldehyde, trichloro-
U034	75-87-6	Chloral
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha & gamma isomers
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U037	108-90-7	Benzene, chloro-
U037	108-90-7	Chlorobenzene
U038	510-15-6	Benzenoacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U041	106-89-8	Epichlorohydrin
U041	106-89-8	Oxirane, (chloromethyl)-
U042	110-75-8	2-Chloroethyl vinyl ether
U042	110-75-8	Ethene, (2-chloroethoxy)-
U043	75-01-4	Ethene, chloro-
U043	75-01-4	Vinyl chloride
U044	67-66-3	Chloroform
U044	67-66-3	Methane, trichloro-
U045	74-87-3	Methane, chloro- (I,T)
U045	74-87-3	Methyl chloride (I,T)
U046	107-30-2	Chloromethyl methyl ether
U046	107-30-2	Methane, chloromethoxy-
U047	91-58-7	beta-Chloronaphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U048	95-57-8	o-Chlorophenol
U048	95-57-8	Phenol, 2-chloro-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U050	218-01-9	Chrysene
U051	Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U052	1319-77-3	Phenol, methyl-
U053	4170-30-3	2-Butenal
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Benzene, (1-methylethyl)- (I)
U055	98-82-8	Cumene (I)
U056	110-82-7	Benzene, hexahydro- (I)
U056	110-82-7	Cyclohexane (I)
U057	108-94-1	Cyclohexanone (I)
U058	50-18-0	Cyclophosphamide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U059	20830-81-3	Daunomycin
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
U060	72-54-8	DDD
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U061	50-29-3	DDT
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Benzo[rs]pentaphene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U067	106-93-4	Ethane, 1,2-dibromo-
U067	106-93-4	Ethylene dibromide
U068	74-95-3	Methane, dibromo-
U068	74-95-3	Methylene bromide
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	Benzene, 1,2-dichloro-
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	Benzene, 1,3-dichloro-
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	Benzene, 1,4-dichloro-
U072	106-46-7	p-Dichlorobenzene

Hazardous Waste No.	Chemical Abstracts No.	Substance
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U075	75-71-8	Methane, dichlorodifluoro-
U076	75-34-3	Ethane, 1,1-dichloro-
U076	75-34-3	Ethylidene dichloride
U077	107-06-2	Ethane, 1,2-dichloro-
U077	107-06-2	Ethylene dichloride
U078	75-35-4	1,1-Dichloroethylene
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	1,2-Dichloroethylene
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U080	75-09-2	Methane, dichloro-
U080	75-09-2	Methylene chloride
U081	120-83-2	2,4-Dichlorophenol
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	2,6-Dichlorophenol
U082	87-65-0	Phenol, 2,6-dichloro-
U083	78-87-5	Propane, 1,2-dichloro-
U083	78-87-5	Propylene dichloride
U084	542-75-6	1,3-Dichloropropene
U084	542-75-6	1-Propene, 1,3-dichloro-
U085	1464-53-5	2,2'-Bioxirane
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U086	1615-80-1	N,N'-Diethylhydrazine
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U090	94-58-6	Dihydrosafrole
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U092	124-40-3	Methanamine, -methyl- (I)
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
U094	57-97-6	7,12-Dimethylbenz[a]anthracene
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U097	79-44-7	Carbamic chloride, dimethyl-
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	1,2-Dimethylhydrazine
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U101	105-67-9	2,4-Dimethylphenol
U101	105-67-9	Phenol, 2,4-dimethyl-
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U103	77-78-1	Sulfuric acid, dimethyl ester
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Diethyleneoxide
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U110	142-84-7	Dipropylamine (l)
U110	142-84-7	1-Propanamine, N-propyl- (l)
U111	621-64-7	Di-n-propylnitrosamine
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U112	141-78-6	Acetic acidethyl ester (l)
U112	141-78-6	Ethyl acetate (l)
U113	140-88-5	Ethyl acrylate (l)
U113	140-88-5	2-Propenoic acid, ethyl ester (l)
U114	¹ 111-54-6	Carbamodithioic acid, 1,2-ethanediybis-, salts & esters
U114	¹ 111-54-6	Ethylenebisdithiocarbamic acid, salts & esters
U115	75-21-8	Ethylene oxide (l,T)
U115	75-21-8	Oxirane (l,T)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U116	96-45-7	Ethylenethiourea
U116	96-45-7	2-Imidazolidinethione
U117	60-29-7	Ethane, 1,1'-oxybis- (I)
U117	60-29-7	Ethyl ether (I)
U118	97-63-2	Ethyl methacrylate
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U119	62-50-0	Ethyl methanesulfonate
U119	62-50-0	Methanesulfonic acid, ethyl ester
U120	206-44-0	Fluoranthene
U121	75-69-4	Methane, trichlorofluoro-
U121	75-69-4	Trichloromonofluoromethane
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U124	110-00-9	Furfuran (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U125	98-01-1	Furfural (I)
U126	765-34-4	Glycidylaldehyde
U126	765-34-4	Oxiranecarboxyaldehyde
U127	118-74-1	Benzene, hexachloro-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U128	87-68-3	Hexachlorobutadiene
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-
U129	58-89-9	Lindane
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Ethane, hexachloro-
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U133	302-01-2	Hydrazine (R,T)
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H ₂ S
U136	75-60-5	Arsinic acid, dimethyl-
U136	75-60-5	Cacodylic acid
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U138	74-88-4	Methane, iodo-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U138	74-88-4	Methyl iodide
U140	78-83-1	Isobutyl alcohol (I,T)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U143	303-34-4	Lasiocarpine
U144	301-04-2	Acetic acid, lead(2+) salt
U144	301-04-2	Lead acetate
U145	7446-27-7	Lead phosphate
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U146	1335-32-6	Lead subacetate
U147	108-31-6	2,5-Furandione
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U149	109-77-3	Malononitrile
U149	109-77-3	Propanedinitrile
U150	148-82-3	Melphalan
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U153	74-93-1	Methanethiol (I,T)
U153	74-93-1	Thiomethanol (I,T)
U154	67-56-1	Methanol (I)
U154	67-56-1	Methyl alcohol (I)
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U155	91-80-5	Methapyrilene
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U159	78-93-3	2-Butanone (I,T)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U161	108-10-1	Methyl isobutyl ketone (I)
U161	108-10-1	4-Methyl-2-pentanone (I)
U161	108-10-1	Pentanol, 4-methyl-
U162	80-62-6	Methyl methacrylate (I,T)
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U163	70-25-7	MNNG
U164	56-04-2	Methylthiouracil
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U165	91-20-3	Naphthalene
U166	130-15-4	1,4-Naphthalenedione
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	1-Naphthalenamine
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	2-Naphthalenamine
U168	91-59-8	beta-Naphthylamine
U169	98-95-3	Benzene, nitro-
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U170	100-02-7	Phenol, 4-nitro-
U171	79-46-9	2-Nitropropane (I,T)
U171	79-46-9	Propane, 2-nitro- (I,T)
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	N-Nitroso-N-methylurea
U177	684-93-5	Urea, N-methyl-N-nitroso-
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U179	100-75-4	Piperidine, 1-nitroso-
U180	930-55-2	N-Nitrosopyrrolidine
U180	930-55-2	Pyrrolidine, 1-nitroso-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U181	99-55-8	5-Nitro-O-toluidine
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U182	123-63-7	Paraldehyde
U183	608-93-5	Benzene, pentachloro-
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Ethane, pentachloro-
U184	76-01-7	Pentachloroethane
U185	82-68-8	Benzene, pentachloronitro-
U185	82-68-8	Pentachloronitrobenzene (PCNB)
U186	504-60-9	1-Methylbutadiene (I)
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U189	1314-80-3	Phosphorus sulfide (R)
U189	1314-80-3	Sulfur phosphide (R)
U190	85-44-9	1,3-Isobenzofurandione
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U191	109-06-8	Pyridine, 2-methyl-
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U192	23950-58-5	Pronamide
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U193	1120-71-4	1,3-Propane sultone
U194	107-10-8	1-Propanamine (I,T)
U194	107-10-8	n-Propylamine (I,T)
U196	110-86-1	Pyridine
U197	106-51-4	p-Benzoquinone
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U200	50-55-5	Reserpine
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U201	108-46-3	1,3-Benzenediol
U201	108-46-3	Resorcinol
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS ₂ (R,T)

Hazardous Waste No.	Chemical Abstracts No.	Substance
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[[(methylnitrosoamino)carbonyl]amino]-
U206	18883-66-4	Streptozotocin
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Ethene, tetrachloro-
U210	127-18-4	Tetrachloroethylene
U211	56-23-5	Carbon tetrachloride
U211	56-23-5	Methane, tetrachloro-
U213	109-99-9	Furan, tetrahydro- (I)
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Acetic acid, thallium(1+) salt
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Nitric acid, thallium(1+) salt
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Ethanethioamide
U218	62-55-5	Thioacetamide
U219	62-56-6	Thiourea
U220	108-88-3	Benzene, methyl-
U220	108-88-3	Toluene
U221	25376-45-8	Benzenediamine, ar-methyl-
U221	25376-45-8	Toluenediamine
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U222	636-21-5	o-Toluidine hydrochloride
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U223	26471-62-5	Toluene diisocyanate (R,T)
U225	75-25-2	Bromoform
U225	75-25-2	Methane, tribromo-
U226	71-55-6	Ethane, 1,1,1-trichloro-
U226	71-55-6	Methyl chloroform
U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	Ethane, 1,1,2-trichloro-
U227	79-00-5	1,1,2-Trichloroethane

Hazardous Waste No.	Chemical Abstracts No.	Substance
U228	79-01-6	Ethene, trichloro-
U228	79-01-6	Trichloroethylene
U234	99-35-4	Benzene, 1,3,5-trinitro-
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[5-amino-4-hydroxy]-, tetrasodium salt
U236	72-57-1	Trypan blue
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U237	66-75-1	Uracil mustard
U238	51-79-6	Carbamic acid, ethyl ester
U238	51-79-6	Ethyl carbamate (urethane)
U239	1330-20-7	Benzene, dimethyl- (I,T)
U239	1330-20-7	Xylene (I)
U240	'94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U240	'94-75-7	2,4-D, salts & esters
U243	1888-71-7	Hexachloropropene
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U244	137-26-8	Thioperoxydicarbonic diamide [(H ₂ N)C(S)] ₂ S ₂ , tetramethyl-
U244	137-26-8	Thiram
U246	506-68-3	Cyanogen bromide (CN)Br
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U247	72-43-5	Methoxychlor
U248	'81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl butyl)-, & salts, when present at concentrations of 0.3% or less
U248	'81-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U249	1314-84-7	Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10% or less
U271	17804-35-2	Benomyl
U271	17804-35-2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester
U278	22781-23-3	Bendiocarb
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methylcarbamate
U279	63-25-2	Carbaryl
U279	63-25-2	1-Naphthalenol, methylcarbamate
U280	101-27-9	Barban
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U328	95-53-4	Benzenamine, 2-methyl-
U328	95-53-4	o-Toluidine
U353	106-49-0	Benzenamine, 4-methyl-
U353	106-49-0	p-Toluidine
U359	110-80-5	Ethanol, 2-ethoxy-

Hazardous Waste No.	Chemical Abstracts No.	Substance
U359	110-80-5	Ethylene glycol monoethyl ether
U364	22961-82-6	Bendiocarb phenol
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U367	1563-38-8	Carbofuran phenol
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U372	10605-21-7	Carbendazim
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U373	122-42-9	Propham
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U387	52888-80-9	Prosulfocarb
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester
U389	2303-17-5	Triallate
U394	30558-43-1	A2213
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
U395	5952-26-1	Diethylene glycol, dicarbamate
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate
U404	121-44-8	Ethanamine, N,N-diethyl-
U404	121-44-8	Triethylamine
U409	23564-05-8	Carbamic acid, [1,2-phenylenebis(liminocarbonothioyl)]bis-, dimethyl ester
U409	23564-05-8	Thiophanate-methyl
U410	59669-26-0	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U410	59669-26-0	Thiodicarb
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U411	114-26-1	Propoxur
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
See F027	87-86-5	Pentachlorophenol
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
See F027	93-72-1	Silvex (2,4,5-TP)
See F027	93-76-5	2,4,5-T
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol

¹CAS number given for parent compound only.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

33.1-24-02-25. Conditional exclusion for used, broken cathode ray tubes and processed cathode ray tube glass undergoing recycling.

Used, broken cathode ray tubes are not solid wastes if they meet the following conditions:

1. Prior to processing. These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:
 - a. Storage. The broken cathode ray tubes must be either:
 - (1) Stored in a building with a roof, floor, and walls; or
 - (2) Placed in a container (for example, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of cathode ray tube glass (including fine solid materials).
 - b. Labeling. Each container in which the used, broken cathode ray tube is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tubes-contains leaded glass" or "Leaded glass from televisions or computers." The container must also be labeled: "Do not mix with other glass materials".
 - c. Transportation. The used, broken cathode ray tubes must be transported in a container meeting the requirements of paragraph 2 of subdivision a and subdivision b.
 - d. Speculative accumulation and use constituting disposal. The used, broken cathode ray tubes are subject to the limitations on speculative accumulation as defined in subdivision h of subsection 3 of section 33.1-24-02-01. If they are used in a manner constituting disposal, they must comply with the applicable requirements of sections 33.1-24-05-201 through 33.1-24-05-209 instead of the requirements of this section.
 - e. Exports. In addition to the applicable conditions specified in subdivisions a through d, exporters of used, broken cathode ray tubes must comply with the following requirements:
 - (1) Notify the environmental protection agency and the department of an intended export before the cathode ray tubes are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped offsite. This notification may cover export activities extending over a twelve month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:
 - (a) Name, mailing address, telephone number and identification number (if applicable) of the exporter of the cathode ray tubes.
 - (b) The estimated frequency or rate at which the cathode ray tubes are to be exported and the period of time over which the cathode ray tubes are to be exported.
 - (c) The estimated total quantity of cathode ray tubes specified in kilograms.
 - (d) All points of entry to and departure from each foreign country through which the cathode ray tubes will pass.
 - (e) A description of the means by which each shipment of the cathode ray tubes will be transported (for example, mode of transportation vehicle (air, highway, rail, water), types of containers (drums, boxes, tanks)).

- (f) The name and address of the recycler or recyclers and the estimated quantity of used cathode ray tubes to be sent to each facility, as well as the names of any alternate recyclers.
- (g) A description of the manner in which the cathode ray tubes will be recycled in the foreign country that will be receiving the cathode ray tubes.
- (h) The name of any transit country through which the cathode ray tubes will be sent and a description of the approximate length of time the cathode ray tubes will remain in such country and the nature of their handling while there.

- (2) ~~Notifications submitted by mail should be sent to the department and to the following mailing address:~~

~~Office of Enforcement and Compliance Assurance, Office of Federal Activities
International Compliance Assurance Division, (Mail Code 2254A)
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460~~

~~Hand-delivered notifications should be sent to:~~

~~Office of Enforcement and Compliance Assurance, Office of Federal Activities
International Compliance Assurance Division, (Mail Code 2254A)
Environmental Protection Agency
Ariel Rios Building, Room 6144
1200 Pennsylvania Avenue NW
Washington, D.C.~~

~~In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export Cathode Ray Tubes".~~ Notifications must be submitted electronically using the environmental protection agency's waste import export tracking system, or its successor system.

- (3) Upon request by the department or the environmental protection agency, the exporter shall furnish to the department and the environmental protection agency any additional information which a receiving country requests in order to respond to a notification.
- (4) The environmental protection agency will provide a complete notification to the receiving country and any transit countries. A notification is complete when the environmental protection agency receives a notification which the environmental protection agency determines satisfies the requirements of paragraph 1. ~~Where a claim of confidentiality is asserted with respect to any notification information required by paragraph 1, the environmental protection agency may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.~~
- (5) The export of cathode ray tubes is prohibited unless ~~the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the cathode ray tubes, the environmental protection agency will forward an acknowledgment of consent to export cathode ray tubes to the exporter. Where the receiving country objects to receipt of the cathode ray tubes or withdraws a prior consent, the environmental protection agency will notify the exporter in writing. The environmental protection agency will also notify the exporter of any responses from transit countries.~~ all of the following occur:

- (a) The receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the cathode ray tubes, environmental protection agency will forward an acknowledgment of consent to export cathode ray tubes to the exporter. Where the receiving country objects to receipt of the cathode ray tubes or withdraws a prior consent, environmental protection agency will notify the exporter in writing. The environmental protection agency will also notify the exporter of any responses from transit countries.
- (b) On or after the automated export system filing compliance date, the exporter or a United States authorized agent shall submit electronic export information for each shipment to the automated export system or its successor system, under the international trade data system platform in accordance with 15 CFR 30.4(b).
- (c) The following items must be included with the electronic export information, along with the information required under 15 CFR 30.6:

 - [1] Environmental protection agency license code;
 - [2] Commodity classification code per 15 CFR 30.6(a)(12);
 - [3] Environmental protection agency consent number;
 - [4] Country of ultimate destination per 15 CFR 30.6(a)(5);
 - [5] Date of export per 15 CFR 30.6(a)(2);
 - [6] Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or
 - [7] Environmental protection agency net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.
- (6) When the conditions specified on the original notification change, the exporter must provide the department and the environmental protection agency with a written renotification of the change, except for changes to the telephone number in subparagraph a of paragraph 1 and decreases in the quantity indicated pursuant to subparagraph c of paragraph 1. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to subparagraphs d and h of paragraph 1) and the exporter of cathode ray tubes receives from the environmental protection agency a copy of the acknowledgment of consent to export cathode ray tubes reflecting the receiving country's consent to the changes.
- (7) A copy of the acknowledgment of consent to export cathode ray tubes must accompany the shipment of cathode ray tubes. The shipment must conform to the terms of the acknowledgment.
- (8) If a shipment of cathode ray tubes cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of cathode ray tubes must renotify the department and the environmental protection agency of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with

paragraph 6 and obtain another acknowledgment of consent to export cathode ray tubes.

~~(9) Exporters must keep copies of notifications and acknowledgments of consent to export cathode ray tubes for a period of three years following receipt of the acknowledgment.~~

~~(10) Cathode ray tube exporters must file with the environmental protection agency and the department no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destinations (for example, the facility or facilities where the recycling occurs) of all used cathode ray tubes exported during the previous calendar year. Such reports must also include the following:~~

~~(a) The name, environmental protection agency identification number (if applicable), and mailing and site address of the exporter;~~

~~(b) The calendar year covered by the report; and~~

~~(c) A certification signed by the cathode ray tube exporter which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." Exporters shall keep copies of notifications and acknowledgments of consent to export cathode ray tubes for a period of three years following receipt of the acknowledgment. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated acknowledgments in the cathode ray tube exporter's account on the environmental protection agency's waste import export tracking system, or its successor system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency or authorized state inspector. No cathode ray tubes exporter may be held liable for the inability to produce a notification or acknowledgment for inspection under this section if the cathode ray tube exporter can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with environmental protection agency's waste import export tracking system, or its successor system for which the cathode ray tube exporter bears no responsibility.~~

(10) Prior to one year after the automated export system filing compliance date, annual reports must be sent to the following mailing address:

Office of Land and Emergency Management,
Office of Resource Conservation and Recovery,
Materials Recovery and Waste Management Division,
International Branch (Mail Code 2255A),
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460.

Hand-delivered annual reports on used cathode ray tubes exported during 2016 should be sent to:

Office of Land and Emergency Management,
Office of Resource Conservation and Recovery,
Materials Recovery and Waste Management Division,
International Branch (Mail Code 2255A),
Environmental Protection Agency
William Jefferson Clinton South Building, Room 6144
1200 Pennsylvania Ave. NW
Washington, DC 20004.

Subsequently, annual reports must be submitted to the office listed. Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the cathode ray tube exporter's account on environmental protection agency's waste import export tracking system, or its successor system, provided that a copy is readily available for viewing and production if requested by any environmental protection agency or authorized state inspector. No cathode ray tube exporter may be held liable for the inability to produce an annual report for inspection under this section if the cathode ray tube exporter can demonstrate that the inability to produce the annual report is due exclusively to technical difficulty with environmental protection agency's waste import export tracking system, or its successor system for which the cathode ray tube exporter bears no responsibility.

- (11) Annual reports must be submitted to the department and the office specified in paragraph 2. Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.
2. Requirements for used cathode ray tube processing. Used, broken cathode ray tubes undergoing cathode ray tube processing as defined in section 33.1-24-01-04 are not solid wastes if they meet the following requirements:
 - a. Storage. Used, broken cathode ray tubes undergoing processing are subject to the requirement of subdivision d of subsection 1.
 - b. Processing.
 - (1) All activities specified in subdivisions b and c of the definition of "cathode ray tube processing" in section 33.1-24-01-04 must be performed within a building with a roof, floor, and walls; and
 - (2) No activities may be performed which use temperatures high enough to volatilize lead from cathode ray tubes.
3. Processed cathode ray tube glass sent to cathode ray tube glass making or lead smelting. Glass from used cathode ray tubes which is destined for recycling at a cathode ray tube glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in subdivision h of subsection 3 of section 33.1-24-02-01.
4. Use constituting disposal. Glass from used cathode ray tubes which is used in a manner constituting disposal must comply with the requirements of sections 33.1-24-05-201 through 33.1-24-05-209 instead of the requirements of this section.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-02-27. Notification and recordkeeping for used, intact cathode ray tubes exported for reuse.

1. Cathode ray tube exporters who export used, intact cathode ray tubes for reuse shall send a notification to the department and the environmental protection agency. This notification may cover export activities extending over a twelve month or lesser period.
 - a. The notification must be in writing, signed by the exporter, and include the following information:
 - (1) Name, mailing address, telephone number, and identification number (if applicable) of the exporter of the used, intact cathode ray tubes;
 - (2) The estimated frequency or rate at which the used, intact cathode ray tubes are to be exported for reuse and the period of time over which cathode ray tubes are to be exported;
 - (3) The estimated total quantity of used, intact cathode ray tubes specified in kilograms;
 - (4) All points of entry to and departure from each transit country through which the used, intact cathode ray tubes will pass, a description of the approximate length of time the used, intact cathode ray tubes will remain in such country, and the nature of cathode ray tubes handling while there;
 - (5) A description of the means by which each shipment of the used, intact cathode ray tubes will be transported (for example, mode of transportation vehicle (air, highway, rail, water), type of container (for example, drums, boxes, tanks));
 - (6) The name and address of the ultimate destination facility or facilities where the used, intact cathode ray tubes will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact cathode ray tubes to be sent to each facility, as well as the name of any alternate destination facility or facilities;
 - (7) A description of the manner in which the used, intact cathode ray tubes will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact cathode ray tubes; and
 - (8) A certification signed by the cathode ray tube exporter which states:

I certify under penalty of law that the cathode ray tubes described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used cathode ray tubes will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

- b. Notifications submitted by mail should be sent to the department and to the following mailing address:

~~Office of Enforcement and Compliance Assurance, Office of Federal Activities
International Compliance Assurance Division, (Mail Code 2254A)
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460~~

[Office of Land and Emergency Management](#)
[Office of Resource Conservation and Recovery](#)
[Materials Recovery and Waste Management Division](#)
[International branch \(Mail Code 2255A\)](#)
[Environmental Protection Agency](#)
[1200 Pennsylvania Ave. NW](#)
[Washington, DC 20460.](#)

Hand-delivered notifications should be sent to:

~~Office of Enforcement and Compliance Assurance, Office of Federal Activities
International Compliance Assurance Division, (Mail Code 2254A)
Environmental Protection Agency
William Jefferson Clinton Building, Room 6144
1200 Pennsylvania Avenue NW
Washington, D.C.~~
[Office of Land and Emergency Management](#)
[Office of Resource Conservation and Recovery](#)
[Materials Recovery and Waste Management Division](#)
[International Branch \(Mail Code 2255A\)](#)
[Environmental Protection Agency](#)
[William Jefferson Clinton South Building](#)
[Room 6144](#)
[1200 Pennsylvania Ave. NW](#)
[Washington, DC 20004](#)

In both cases, the following must be prominently displayed on the front of the envelope:
"Attention: Notification of Intent to Export Cathode Ray Tubes".

2. Cathode ray tube exporters of used, intact cathode ray tubes sent for reuse shall keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact cathode ray tubes will be reused. This documentation must be retained for a period of at least three years from the date the cathode ray tubes were exported. If the documents are written in a language other than English, cathode ray tube exporters of used, intact cathode ray tubes sent for reuse shall provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within thirty days upon request by the department or the environmental protection agency.

History: Effective January 1, 2019; [amended effective July 1, 2020.](#)

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-02-129. Contingency planning and emergency procedures for facilities generating or accumulating more than six thousand kilograms of hazardous secondary material.

A generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33.1-24-01-10 which generates or accumulates more than six thousand kilograms of hazardous secondary material shall comply with the following requirements:

1. Purpose and implementation of contingency plan.
 - a. Each generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33.1-24-01-10 which accumulates more than six thousand kilograms of hazardous secondary material shall have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to

human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

- b. The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents that could threaten human health or the environment.
2. Content of contingency plan.
 - a. The contingency plan must describe the actions facility personnel must take to comply with subsections 1 and 6 in response to fires, explosions, or any unplanned sudden or nonsudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.
 - b. If the generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33.1-24-01-10 accumulating more than six thousand kilograms of hazardous secondary material has already prepared a spill prevention, control, and countermeasures plan in accordance with 40 CFR part 112, or some other emergency or contingency plan, the generator or an intermediate or reclamation facility need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this section. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under subsection 4 of section 33.1-24-01-10 may develop one contingency plan which meets all regulatory requirements. The department recommends the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to nonhazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.
 - c. The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to subsection 6 of section 33.1-24-02-121.
 - d. The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subsection 5), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
 - e. The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
 - f. The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous secondary material, hazardous waste or fires).
 3. Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:
 - a. Maintained at the facility; and

- b. Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.
4. Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:
- a. Applicable regulations are revised;
 - b. The plan fails in an emergency;
 - c. The facility changes in its design, construction, operation, maintenance, or other circumstances, in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;
 - d. The list of emergency coordinators changes; or
 - e. The list of emergency equipment changes.
5. Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (for example, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in subsection 6. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary materials handled by the facility, and type and complexity of the facility.
6. Emergency procedures.
- a. Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) immediately shall:
 - (1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - (2) Notify appropriate state or local agencies with designated response roles if their help is needed.
 - b. Whenever there is a release, fire, or explosion, the emergency coordinator immediately shall identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.
 - c. Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (for example, the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosions).

- d. If the emergency coordinator determines the facility has had a release, fire, or explosion that could threaten human health, or the environment, outside the facility, the emergency coordinator shall report the emergency coordinator's findings as follows:
 - (1) If the emergency coordinator's assessment indicates evacuation of local areas may be advisable, the emergency coordinator immediately shall notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and
 - (2) The emergency coordinator immediately shall notify either the government official designated as the onscene coordinator for that geographical area, or the national response center (using their twenty-four-hour toll free number 800-424-8802). The report must include:
 - (a) Name and telephone number of reporter;
 - (b) Name and address of facility;
 - (c) Time and type of incident (for example, release, fire);
 - (d) Name and quantity of materials involved, to the extent known;
 - (e) The extent of injuries, if any; and
 - (f) The possible hazards to human health, or the environment, outside the facility.
- e. During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.
- f. If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
- g. Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with subsection 3 or 4 of section 33.1-24-02-03, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of chapters 33.1-24-03, 33.1-24-04, and subsection 5 of section 33.1-24-06-16.
- h. The emergency coordinator shall ensure that, in the affected areas of the facility:
 - (1) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
 - (2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.
- i. The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen days after the incident, the hazardous secondary material generator shall submit a written report on the incident to the department. The report must include:

- (1) Name, address, and telephone number of the hazardous secondary material generator;
- (2) Name, address, and telephone number of the facility;
- (3) Date, time, and type of incident (for example, fire, explosion);
- (4) Name and quantity of materials involved;
- (5) The extent of injuries, if any;
- (6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (7) Estimated quantity and disposition of recovered material that resulted from the incident.

7. Personnel training. All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

CHAPTER 33.1-24-03 STANDARDS FOR GENERATORS

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33.1-24-03-01. Scope and applicability.

This chapter establishes standards for generators of hazardous waste.

1. ~~Subsections 3 and 4 of section 33.1-24-02-05 must be used to determine the applicability of provisions of this chapter that are dependent on calculations of the quantity of hazardous waste generated per month.~~

~~2. A generator who treats, stores, or disposes of hazardous waste onsite must only comply with the following sections of this chapter with respect to that waste: Section 33.1-24-03-02 for determining whether or not the generator has a hazardous waste, section 33.1-24-03-03 for obtaining an identification number, section 33.1-24-03-12 for accumulation of hazardous waste, subsections 3 and 4 of section 33.1-24-03-13 for recordkeeping, section 33.1-24-03-16 for additional reporting and if applicable, section 33.1-24-03-40 for farmers.~~ A person who generates a hazardous waste is subject to all applicable requirements listed below:

a. Requirements of a very small quantity generator:

(1) Section 33.1-24-03-02 Hazardous waste determination;

(2) Section 33.1-24-03-13 Recordkeeping; and

(3) Subsection 2 of section 33.1-24-03-03 generator category determination.

b. Requirements of a small quantity generator:

(1) Section 33.1-24-03-02 hazardous waste determination;

(2) Section 33.1-24-03-13 recordkeeping;

(3) Subsection 2 of section 33.1-24-03-03 generator category determination;

(4) Section 33.1-24-03-03 identification number and registration certificate;

(5) Sections 33.1-24-03-04 through 33.1-24-03-07 manifest requirements;

(6) Section 33.1-24-03-08 packaging;

(7) Section 33.1-24-03-09 labeling;

(8) Section 33.1-24-03-10 marking;

(9) Section 33.1-24-03-11 placarding;

(10) Section 33.1-24-03-27 satellite accumulation area regulations for small and large quantity generators;

(11) Section 33.1-24-03-28 conditions for exemption for a small quantity generator that accumulates hazardous waste; and

(12) The transboundary requirements found in sections 33.1-24-03-50 through 33.1-24-03-55.

c. Requirements of a large quantity generator:

(1) Section 33.1-24-03-02 hazardous waste determination;

(2) Sections 33.1-24-03-13 through 33.1-24-03-16 for recordkeeping and reporting;

(3) Subsection 2 of section 33.1-24-03-03 generator category determination;

(4) Section 33.1-24-03-03 identification number and registration certificate;

- (5) Sections 33.1-24-03-04 through 33.1-24-03-07 manifest requirements;
 - (6) Section 33.1-24-03-08 packaging;
 - (7) Section 33.1-24-03-09 labeling;
 - (8) Section 33.1-24-03-10 marking;
 - (9) Section 33.1-24-03-11 placarding;
 - (10) Section 33.1-24-03-27 satellite accumulation area regulations for small and large quantity generators;
 - (11) Section 33.1-24-03-28 conditions for exemption for a large quantity generator that accumulates hazardous waste; and
 - (12) The transboundary requirements found in sections 33.1-24-03-50 through 33.1-24-03-55.
2. A generator that accumulates hazardous wastes onsite is a person that stores hazardous waste; such generator is subject to the applicable requirements of chapters 33.1-24-05, 33.1-24-06, and 33.1-24-07 and section 33.1-24-03-03, unless it has met the following exemption conditions:
- a. The generator is a very small quantity generator that meets the conditions for exemption in section 33.1-24-02-26;
 - b. The generator is a small quantity generator that meets the conditions for exemption in sections 33.1-24-03-27 and 33.1-24-03-28; or
 - c. The generator is a large quantity generator that meets the conditions for exemption in sections 33.1-24-03-27 and 33.1-24-03-29.
3. A generator may not transport, offer for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility as defined in section 33.1-24-01-04, or not otherwise authorized to receive the generator's hazardous waste.
4. A generator shall use subsection 2 of section 33.1-24-03-03 to determine which provisions of this chapter are applicable to the generator based on the quantity of hazardous waste generated per calendar month.
- ~~3-5.~~ Any person who exports or imports hazardous waste into the United States through this state must comply with ~~the standards applicable to generators established in this chapter~~sections 33.1-24-03-50 through 33.1-24-03-55.
- ~~4-6.~~ Any person who exports or imports wastes that are considered hazardous under United States national procedures to or from the countries listed in subdivision a of subsection 1 of section 33.1-24-03-25 for recovery must comply with sections 33.1-24-03-50 through 33.1-24-03-59. A waste is considered hazardous under United States national procedures if the waste meets the federal definition of hazardous waste in 40 CFR 261.3 and is subject to manifesting requirements at sections 33.1-24-03-04 through 33.1-24-03-07, the universal waste management standards of sections 33.1-24-05-700 through 33.1-24-05-799 or the export requirements in the spent lead-acid battery management standards of sections 33.1-24-05-235 through 33.1-24-05-249.
- ~~5-7.~~ A farmer who generates waste pesticides which are hazardous waste and who complies with all the requirements of section 33.1-24-03-40 is not required to comply with other standards in chapters 33.1-24-03, 33.1-24-05, and 33.1-24-06 with respect to such pesticides.

~~6-8.~~ A person who generates a hazardous waste as defined in chapter 33.1-24-02 is subject to the compliance requirements and penalties prescribed in North Dakota Century Code chapter 23.1-04 if the person does not comply with the requirements of this chapter.

~~7-9.~~ An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this chapter.

~~8-10.~~ Persons responding to an explosives or munitions emergency in accordance with subparagraph d of paragraph 1 of subdivision g of subsection 6 of section 33.1-24-05-01 or paragraph 4 of subdivision g of subsection 6 of section 33.1-24-05-01 or 40 CFR 265.1(c)(11) (i)(D) or (iv) as incorporated by reference at subsection 5 of section 33.1-24-06-16, and item 4 of subparagraph a and subparagraph c of paragraph 9 of subdivision b of subsection 2 of section 33.1-24-06-01, are not required to comply with the standards of chapter 33.1-24-03.

~~9-11.~~ The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of sections 33.1-24-03-60 through 33.1-24-03-77 are not subject to (for purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in section 33.1-24-03-61):

- a. The requirements of section 33.1-24-03-02 or ~~subsection 3 of section 33.1-24-03-12~~section 33.1-24-03-27, for large quantity generators and small quantity generators, except as provided in sections 33.1-24-03-60 through 33.1-24-03-77; and
- b. The conditions of subsection 2 of section 33.1-24-02-05, for ~~conditionally exempt~~very small quantity generators, except as provided in sections 33.1-24-03-60 through 33.1-24-03-77.

~~Note 1: The provisions of section 33.1-24-03-12 are applicable to the onsite accumulation of hazardous waste by generators. Therefore, the provisions of section 33.1-24-03-12 only apply to owners or operators who are shipping hazardous waste that they generated at that facility.~~

~~Note 2:~~ A generator who treats, stores, or disposes of hazardous waste onsite must comply with the applicable standards and permit requirements set forth in chapters 33.1-24-05 and 33.1-24-06.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-02. Hazardous waste determination.

A person who generates a solid waste as defined in section 33.1-24-02-02 must determine if that waste is a hazardous waste using the following method:

1. The person should first determine if the waste is excluded from regulation under section 33.1-24-02-04.
2. The person must then determine if the waste is listed as a hazardous waste in chapter 33.1-24-02.
3. For purposes of compliance with sections 33.1-24-05-250 through 33.1-24-05-299, or if the waste is not listed in sections 33.1-24-02-15 through 33.1-24-02-18, the generator must then determine whether the waste ~~is~~exhibits a hazardous characteristic identified in sections 33.1-24-02-10 through 33.1-24-02-14 by either:

- a. Testing the waste according to the methods set forth in chapter 33.1-24-02 or an equivalent method as approved by the department; ~~or. Persons testing their waste shall obtain a representative sample of the waste for testing, as defined in section 33.1-24-01-04.~~
- b. Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

All waste analysis pursuant to subdivision a must be conducted by a laboratory approved by the department's certification procedures.

4. If the waste is determined to be hazardous, the generator must refer to chapter 33.1-24-02 and sections 33.1-24-05-01 through 33.1-24-05-559, sections 33.1-24-05-700 through 33.1-24-05-1149, and subsection 5 of section 33.1-24-06-16 for possible exclusions or restrictions pertaining to management of the generator's specific waste.

5. The hazardous waste determination for each solid waste must be made at the point of waste generation. Determinations must be made before any dilution, mixing, or other alteration of the waste occurs. The determination also must take place before the waste experiences changes, or has the potential to experience changes, in properties that would affect the Resource Conservation and Recovery Act classification as a result of exposure to the environment.

6. If the waste is determined to be hazardous, small quantity generators and large quantity generators shall identify all applicable environmental protection agency hazardous waste numbers (environmental protection agency hazardous waste codes) in sections 33.1-24-02-10 through 33.1-24-02-19. Prior to shipping the waste offsite, the generator also shall mark its containers with all applicable hazardous waste numbers (environmental protection agency hazardous waste codes) according to section 33.1-24-03-10.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-03. Identification number ~~and~~, registration certificate, and generator category determination.

1. A generator may not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an identification number and a registration certificate from the department.
2. A generator shall determine its generator category. A generator's category is based on the amount of hazardous waste generated each month. This category may change from month to month. The procedures to determine a generator's category are listed in subdivisions a and b.
 - a. A generator who generates either acute hazardous waste or nonacute hazardous waste in a calendar month shall determine its generator category for that month by:
 - (1) Counting the total amount of acute hazardous or nonacute hazardous waste generated in the calendar month;
 - (2) Subtracting from the total any amounts of waste exempt from counting as described by section 33.1-24-02-04; and
 - (3) Determining the resulting generator category using table 1.
 - b. A generator who generates both acute hazardous waste and nonacute hazardous waste in the same calendar month shall determine its generator category for that month by:

- (1) Separately counting the total amount of acute hazardous waste and the total amount of nonacute hazardous waste generated in the calendar month;
- (2) Subtracting from the totals any amounts of waste exempt from counting as described by section 33.1-24-02-04;
- (3) Separately determining resulting generator categories for the quantities of acute hazardous waste and nonacute hazardous waste using table 1; and
- (4) Applying the more stringent generator category to the accumulation and management of both acute hazardous waste and nonacute hazardous waste generated for that month.

Table 1. Generator Categories Based on Quantity of Waste Generated.

<u>Quantity of Acute Hazardous Waste Generated in a Calendar Month</u>	<u>Quantity of Nonacute Hazardous Waste Generated in a Calendar Month</u>	<u>Quantity of Residues From a Cleanup of Acute Hazardous Waste Generated in a Calendar Month</u>	<u>Generator Category</u>
<u>Greater than 1 kg (2.2 lbs)</u>	<u>Any amount</u>	<u>Any amount</u>	<u>Large quantity generator</u>
<u>Any amount</u>	<u>Greater than or equal to 1,000 kg (2,200 lbs)</u>	<u>Any amount</u>	<u>Large quantity generator</u>
<u>Any amount</u>	<u>Any amount</u>	<u>Greater than 100 kg (220 lbs)</u>	<u>Large quantity generator</u>
<u>Less than or equal to 1 kg (2.2 lbs)</u>	<u>Between 100 kg (220 lbs) and 1,000 kg (2,200 lbs)</u>	<u>Less than or equal to 100 kg (220 lbs)</u>	<u>Small quantity generator</u>
<u>Less than or equal to 1 kg (2.2 lbs)</u>	<u>Less than or equal to 100 kg (220 lbs)</u>	<u>Less than or equal to 100 kg (220 lbs)</u>	<u>Very small quantity generator</u>

c. When making the monthly determinations required by this section, the generator shall include all hazardous waste that it generates, except hazardous waste that:

- (1) Is excluded from regulation under subsections 3 through 6 of section 33.1-24-02-04, subdivision c of subsection 1 of section 33.1-24-02-06, subdivision a of subsection 1 of section 33.1-24-02-07, and subsection 7 of section 33.1-24-02-04;
- (2) Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in section 33.1-24-01-04;
- (3) Is a material recycled, without prior storage or accumulation, only in an onsite process, under the requirements of subdivision b of subsection 3 of section 33.1-24-02-06;
- (4) Is managed as part of an episodic event in compliance with section 33.1-24-03-34;
- (5) Is used oil managed under the requirements listed in 33.1-24-05-600 through 33.1-24-05-699;

(6) Is spent lead-acid batteries managed under the requirements of 33.1-24-05-235;

(7) Is universal waste managed under the requirements of 33.1-24-05-700 through 33.1-24-05-799.

d. When determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from onsite accumulation, so long as the hazardous waste was previously counted once;

(2) Hazardous waste generated by onsite treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been previously counted once.

e. Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to section 33.1-24-03-26 even though the resultant mixture exceeds the quantity limits identified in the definition of a very small quantity generator at section 33.1-24-01-04; unless the mixture exhibits one or more of the characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14. If the mixed wastes exhibit a characteristic of hazardous waste, the mixture must be included in all hazardous waste counts for that month.

f. Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid wastes. These mixtures are subject to the following:

(1) The mixture rule in paragraph 4 of subdivision b of subsection 1 of section 33.1-24-02-03, subdivisions b and c of subsection 2 of 33.1-24-02-03, and paragraph 1 of subdivision a of subsection 7 of section 33.1-24-02-03;

(2) The prohibition of dilution rule in subsection 1 of section 33.1-24-05-252;

(3) The land disposal restriction requirements of section 33.1-24-05-280 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic;

(4) The hazardous waste determination requirements of section 33.1-24-03-02; and

(5) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly generated hazardous waste. The mixture must be included in all hazardous waste counts for that month.

g. Based on the generator category as determined under this section, the generator shall meet the applicable requirements listed in sections 33.1-24-03-26, 33.1-24-03-28, and 33.1-24-03-29.

3. A generator who has not received an identification number and a registration certificate may obtain one by applying to the department using environmental protection agency form 8700-12. Upon receiving the request the department will assign an identification number and issue a registration certificate to the generator.

3.4. A generator may not offer the generator's hazardous waste to transporters that have not received an identification number and a transporter permit, or to treatment, storage, or

disposal facilities that have not received an identification number and applied for a hazardous waste permit.

4.5. A recognized trader must not arrange for import or export of hazardous waste without having received an environmental protection agency identification number from the department.

6. The department may assess and collect reasonable fees for the issuance of registration certificates.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03, 23.1-04-09; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-09; S.L. 2017, ch. 199, § 19

33.1-24-03-04. General requirements of the manifest.

1. A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a manifest on environmental protection agency form 8700-22, and if necessary, environmental protection agency form 8700-22A, according to instructions included in appendix I to this chapter.
 - a. The revised manifest form and procedures in sections 33.1-24-01-04, 33.1-24-02-07, 33.1-24-03-04, 33.1-24-03-05, subsection 6 of section 33.1-24-03-07, sections 33.1-24-03-10, ~~33.1-24-03-12,~~ 33.1-24-03-21, ~~33.1-24-03-30~~33.1-24-03-26 through 33.1-24-03-29, and appendix I to this chapter, shall not apply until September 5, 2006, or article 33.1-24 is amended and effective, but not prior to September 5, 2006. The manifest form and procedures in sections 33.1-24-01-04, 33.1-24-02-07, 33.1-24-03-04, 33.1-24-03-05, 33.1-24-03-10, ~~33.1-24-03-12,~~ 33.1-24-03-21, ~~33.1-24-03-30~~33.1-24-03-26 through 33.1-24-03-29, and appendix I to this chapter contained in article 33.1-24, amended December 1, 2003, shall be applicable until September 5, 2006, or when amended, but not prior to September 5, 2006.
 - b. Electronic manifest. In lieu of using the manifest form specified in subsection 1, a person required to prepare a manifest under subsection 1 may prepare and use an electronic manifest, provided that the person:
 - (1) Complies with the requirements in subsection 8 of section 33.1-24-03-07 for use of electronic manifests; and
 - (2) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to the environmental protection agency.
2. A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.
3. A generator may also designate on the manifest one alternate facility which is permitted to handle the generator's waste in the event an emergency prevents delivery of the waste to the primary designated facility.
4. If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.
5. The requirements of sections 33.1-24-03-04 through 33.1-24-03-07 do not apply to hazardous waste produced by generators of greater than one hundred kilograms but less than one thousand kilograms in a calendar month where:

- a. The waste is reclaimed under a contractual agreement pursuant to which:
 - (1) The type of waste and frequency of shipments are specified in the agreement; and
 - (2) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and
 - b. The generator maintains a copy of the reclamation agreement in the generator's files for a period of at least three years after termination or expiration of the agreement.
6. The requirements of sections 33.1-24-03-04 through 33.1-24-03-07 and subsection 2 of section 33.1-24-03-10 do not apply to the transport of hazardous wastes on a public or private right of way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right of way. Notwithstanding subsection 1 of section 33.1-24-04-01, the generator or transporter must comply with the requirements for transporters set forth in sections 33.1-24-04-07 and 33.1-24-04-08 in the event of a discharge of hazardous waste on a public or private right of way.

7. In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be traced through a hazardous waste manifest, the designated facility that receives the waste, regardless of the state in which the facility is located, shall :

- a. Complete the facility portion of the applicable manifest;
- b. Sign and date the facility certification;
- c. Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and
- d. Pay the appropriate per manifest fee to environmental protection agency for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of 40 CFR 264.

8. Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.

- a. For the purposes of this subsection, "state-only regulated waste" means:
 - (1) A non-Resource Conservation and Recovery Act waste that a state regulates more broadly under its state regulatory program; or
 - (2) A Resource Conservation and Recovery Act hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.
- b. In any case in which a state requires a Resource Conservation and Recovery Act manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:
 - (1) Comply with the provisions of sections 33.1-24-05-38 (use of the manifest), and 33.1-24-05-39 (manifest discrepancies) of this chapter; and

(2) Pay the appropriate per manifest fee to environmental protection agency for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of 40 CFR 264.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-05. Manifest tracking numbers, manifest printing, and obtaining manifests.

1. A registrant:
 - a. May not print, or have printed, the manifest for use of distribution unless it has received approval from the environmental protection agency director of the office of resource conservation and recovery to do so under subsections 3 and 5.
 - b. The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to the registrant's manifests.
2. A registrant must submit an initial application to the environmental protection agency director of the office of resource conservation and recovery that contains the following information:
 - a. Name and mailing address of registrant.
 - b. Name, telephone number, and electronic mail address of contact person.
 - c. Brief description of registrant's government or business activity.
 - d. Environmental protection agency identification number of the registrant, if applicable.
 - e. Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:
 - (1) A description of the printing operation. The description should include an explanation of whether the registrant intends to print the registrant's manifests in-house (for example, using the registrant's own printing establishments) or through a separate (for example, unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on the registrant's behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (for example, prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of each company. It also must provide the name and telephone number of the contact person at each company.
 - (2) A description of how the registrant will ensure that the registrant's organization and unaffiliated companies, if any, comply with the requirements of this section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be preprinted on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The

application must also indicate how the printer will preprint a unique number on each form (for example, crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

- (3) An indication of whether the registrant intends to use the manifests for the registrant's own business operations or to distribute the manifests to a separate company or to the general public (for example, for purchase).
 - f. A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so (for example, corporate brochures, product samples, customer references, documentation of international organization for standardization certification), so long as such information pertains to the establishments or company being proposed to print the manifest.
 - g. Proposed unique three letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to preprint a unique manifest tracking number on each manifest.
 - h. A signed certification by a duly authorized employee of the registrant that the organizations and companies in the registrant's application will comply with the procedures of its approved application and the requirements of this section and that the registrant will notify the environmental protection agency director of the office of resource conservation and recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.
3. The environmental protection agency will review the application submitted under subsection 2 and either approve the application or request additional information or modification before approving the application.
 4. The environmental protection agency upon approval of the application under subsection 3:
 - a. Will provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in subdivision c of this subsection. The registrant's samples must meet all of the specifications in subsection 6 and be printed by the company that will print the manifest as identified in the application approved under subsection 3.
 - b. The registrant must submit a description of the manifest samples as follows:
 - (1) Paper type (for example, manufacturer and grade of the manifest paper);
 - (2) Paper weight of each copy;
 - (3) Ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and
 - (4) Method of binding the copies.
 - c. The registrant need not submit samples of the continuation sheet if the registrant will print the registrant's continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.
 5. The environmental protection agency will evaluate the forms and either approve the registrant to print the forms as proposed or request additional information or modification to the forms

before approval. The environmental protection agency will notify the registrant of the environmental protection agency's decision by mail. The registrant cannot use or distribute the registrant's forms until the environmental protection agency approves the forms. An approved registrant must print the manifest and continuation sheet according to the registrant's application approved under subsection 3 and the manifest specifications in subsection 6. The registrant also must print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of the registrant's approved forms.

6. Paper manifests and continuation sheets must be printed according to the following specifications:

- a. The manifest and continuation sheet must be printed with the exact format and appearance as environmental protection agency forms 8700-22 and 8700-22a, respectively. However, information required to complete the manifest may be preprinted on the manifest form.
- b. A unique manifest tracking number assigned in accordance with a numbering system approved by the environmental protection agency must be preprinted in item 4 of the manifest. The tracking number must consist of a unique three letter suffix following nine digits.
- c. The manifest and continuation sheet must be printed on eight and one-half by eleven inch white paper, excluding common stubs (for example, top or side bound stubs). The paper must be durable enough to withstand normal use.
- d. The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be printed with a distinct ink color or with another method (for example, white text against black background, in text box, or, black text against gray background in text box) that clearly distinguishes the copy distribution notations from the other text and data entries on the form.
- e. The manifest and continuation sheet must be printed as ~~six~~five copy forms. Copy-to-copy registration must be exact within one thirty-second of an inch. Handwritten and typed impressions on the form must be legible on all ~~six~~five copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.
- f. Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(1) Page 1 (top copy): ~~"designated facility to destination state (if required)"~~"designated facility to environmental protection agency's e-Manifest system".

(2) ~~Page 2: "designated facility to generator state (if required)"~~.

~~(3)~~ Page ~~3~~2: "designated facility to generator".

~~(4)~~(3) Page ~~4~~3: "designated facility's copy".

~~(5)~~(4) Page ~~5~~4: "transporters' copy".

~~(6)~~(5) Page ~~6~~5 (bottom copy): "generator's initial copy".

- g. ~~The instructions in the appendix to 40 CFR regulations part 262 must appear legibly on the back of the copies of the manifest and continuation sheet as provided in subsection 6. The instructions must not be visible through the front of the copies when~~

~~photocopied or faxed~~ The instructions for the manifest form (environmental protection agency form 8700-22) and the manifest continuation sheet (environmental protection agency form 8700-22A) must be printed in accordance with the content that is currently approved under Office of Management and Budget Control Number 2050-0039 and published to the e-Manifest program's website. The instructions must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this subsection. The instructions must not be visible through the front of the copies when photocopied or faxed.

(1) Manifest form 8700-22.

- (a) The "instructions for generators" on copy 65;
- (b) The "instructions for international shipment block" and "instructions for transporters" on copy 54; and
- (c) The "instructions for treatment, storage, and disposal facilities" on copy 43.

(2) Manifest form 8700-22a.

- (a) The "instructions for generators" on copy 65;
- (b) The "instructions for transporters" on copy 54; and
- (c) The "instructions for treatment, storage, and disposal facilities" on copy 43.

h. The designated facility copy of each manifest and continuation sheet must include in the bottom margin the following warning in prominent font:

"If you received this manifest, you have responsibilities under the e-Manifest Act. See instructions on reverse side."

7. A generator:

- a. May use manifests printed by any source so long as the source of the printed form has received approval from the environmental protection agency to print the manifest under subsections 3 and 5. A registered source may be a:
 - (1) State agency;
 - (2) Commercial printer;
 - (3) Hazardous waste generator, transporter or treatment, storage, or disposal facility; or
 - (4) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.
- b. Must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

8. Registrant requests.

- a. If an approved registrant would like to update any of the information provided in its application approved under subsection 3 (for example, to update a company phone number or name of contact person), the registrant must revise the application and submit it to the environmental protection agency director of the office of resource conservation and recovery, along with an indication or explanation of the update, as soon as practicable after the change occurs. The agency either will approve or deny the revision. If the agency denies the revision, the agency will explain the reasons for the denial, and the agency will contact the registrant and request further modification before approval.
 - b. If the registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the environmental protection agency director of the office of resource conservation and recovery, along with the reason for requesting a new tracking number suffix. The agency will either approve the suffix or deny the suffix and provide an explanation why the proposed suffix is not acceptable.
 - c. If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of the registrant's manifest or continuation sheet subsequent to approval under subsection 5, then the registrant must submit three samples of the revised form for the environmental protection agency's review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. The environmental protection agency will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to the manifests before approval. The environmental protection agency will notify the registrant of the agency's decision by mail. The registrant cannot use or distribute the registrant's revised forms until the environmental protection agency approves the forms.
9. If, subsequent to the registrant's approval under subsection 5, a registrant typesets the registrant's manifest or continuation sheet instead of using the electronic file of the forms provided by the environmental protection agency, the registrant must submit three samples of the manifest or continuation sheet to the registry for approval. The environmental protection agency will evaluate the manifest or continuation sheet and either approve the registrant to print the manifest or continuation sheet as proposed or request additional information or modification to the manifest or continuation sheet before approval. The environmental protection agency will notify the registrant of the agency's decision by mail. The registrant cannot use or distribute its typeset forms until the environmental protection agency approves the forms.
 10. The environmental protection agency may exempt a registrant from the requirement to submit form samples under subsection 4 or subdivision c of subsection 8 if the agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision (for example, a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant). A registrant may request an exemption from the environmental protection agency by indicating why an exemption is warranted.
 11. An approved registrant must notify the environmental protection agency by phone or electronic mail as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.
 12. If, subsequent to approval of a registrant under subsection 5, the environmental protection agency becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, the environmental protection agency will contact the registrant and require modifications to the form.

13. The environmental protection agency:
 - a. May suspend and, if necessary, revoke printing privileges if the agency finds that the registrant:
 - (1) Has used or distributed forms that deviate from the registrant's approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or
 - (2) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.
 - b. Will send a warning letter to the registrant that specifies the date by which the registrant must come into compliance with the requirements. If the registrant does not come in compliance by the specified date, the environmental protection agency will send a second letter notifying the registrant that the environmental protection agency has suspended or revoked the registrant's printing privileges. An approved registrant must provide information on the registrant's printing activities to the environmental protection agency if requested.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-07. Use of the manifest.

1. The generator must:
 - a. Sign the manifest certification by hand;
 - b. Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and
 - c. Retain one copy, in accordance with subsection 1 of section 33.1-24-03-13.
2. The generator must give the transporter the remaining copies of the manifest.
3. For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.
4. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:
 - a. The next nonrail transporter, if any;
 - b. The designated facility if transported solely by rail; or
 - c. The last rail transporter to handle the waste in the United States if exported by rail.
5. For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

6. Waste minimization certification. A generator who initiates a shipment of hazardous waste must certify to one of the following statements in item 15 of the uniform hazardous waste manifest:
 - a. "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment"; or
 - b. "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."
7. For rejected shipments of hazardous waste or container residues contained in nonempty containers that are returned to the generator by the designated facility (following the procedures of subsection 6 of section 33.1-24-05-39), the generator must:
 - a. Sign either:
 - (1) Item 20 of the new manifest if a new manifest is used for the returned shipment; or
 - (2) Item 18c of the original manifest if the original manifest is used for the returned shipment.
 - b. Provide the transporter a copy of the manifest;
 - c. Within thirty days of delivery of the rejected shipment or container residues contained in nonempty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and
 - d. Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.
8. Use of the electronic manifest. Electronic manifests are equivalent to paper manifests.
 - a. Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33.1-24-03-04, and used in accordance with this subsection in lieu of environmental protection agency forms 8700-22 and 8700-22a are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these rules to obtain, complete, sign, provide, use, or retain a manifest.
 - (1) Any requirement in these rules to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.
 - (2) Any requirement in these rules to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.
 - (3) Any requirement in these rules for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-manifest system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency or authorized department representative.

- (4) No generator may be held liable for the inability to produce an electronic manifest for inspection under this subsection if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.
- b. A generator may participate in the electronic manifest system either by accessing the electronic manifest system from the generator's own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for offsite transportation.
 - c. Restriction on use of electronic manifests. A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the electronic manifest system, except that a generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.
 - d. Requirement for one printed copy. To the extent the hazardous materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.
 - e. Special procedures when electronic manifest is unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (environmental protection agency forms 8700-22 and 8700-22A) in accordance with the manifest instructions in appendix I to this chapter, and use these paper forms from this point forward in accordance with the requirements of subsections 1 through 5 and 7.
 - f. Special procedures for electronic signature methods undergoing tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator or offeror certification on the printed copy of the manifest provided under subdivision d.
 - g. ~~Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by the environmental protection agency for the origination of each electronic manifest. The environmental protection agency shall maintain and update from time to time the schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The schedule of electronic manifest user fees shall be published by the environmental protection agency as an appendix to 40 CFR Part 262.~~Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Generators may participate electronically in the post-receipt data corrections process by

following the process described in subsection 12 of section 33.1-24-05-38, which applies to corrections made to either paper or electronic manifest records.

9. Electronic manifest signatures. Electronic signature methods for the e-manifest system shall:
 - a. Be a legally valid and enforceable signature under applicable environmental protection agency and other federal requirements pertaining to electronic signatures; and
 - b. Be a method that is designed and implemented in a manner that the environmental protection agency considers to be as cost-effective and practical as possible for users of the manifest.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-10. Marking.

1. Before transporting or offering hazardous waste for transportation offsite, a generator must mark each package of hazardous waste in accordance with the applicable department of transportation regulations on hazardous materials under 49 CFR part 172.
2. Before transporting hazardous waste or offering hazardous waste for transportation offsite, a generator must mark each container of one hundred nineteen gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR part 172.304:

HAZARDOUS WASTE - Federal Law prohibits improper disposal. If found, contact the nearest police or public safety authority or the United States Environmental Protection Agency.

Generator's Name and Address _____.

Generator's Identification Number _____.

Manifest Tracking Number _____.

Environmental protection agency hazardous waste number _____.

3. A generator may use a nationally recognized electronic system, such as bar coding, to identify the environmental protection agency hazardous waste number required in subsection 2 or subsection 4.

4. Lab packs that will be incinerated in compliance with subsection 3 of section 33.1-24-05-282 are not required to be marked with environmental protection agency hazardous waste number; except D004, D005, D006, D007, D008, D010, and D011 where applicable.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-12. Accumulation time.

Repealed effective July 1, 2020.

- ~~1. Except as provided in subsections 4, 5, and 6, a generator may accumulate hazardous waste onsite for ninety days or less without a permit or without having interim status provided that:~~

~~a. The waste is placed:~~

~~(1) In containers and the generator complies with the applicable requirements of sections 33.1-24-05-89 through 33.1-24-05-102 and sections 33.1-24-05-400 through 33.1-24-05-474;~~

~~(2) In tanks and the generator complies with the applicable requirements of sections 33.1-24-05-103 through 33.1-24-05-115 and sections 33.1-24-05-400 through 33.1-24-05-474, except subsection 3 of section 33.1-24-05-110 and section 33.1-24-05-113;~~

~~(3) On drip pads and the generator complies with sections 33.1-24-05-501 through 33.1-24-05-524 and maintains the following records at the facility:~~

~~(a) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and~~

~~(b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; or~~

~~(4) In containment buildings and the generator complies with sections 33.1-24-05-475 through 33.1-24-05-500 and has placed its professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476 in the facility's operating record no later than sixty days after the date of initial operation of the unit. After February 18, 1993, professional engineer certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:~~

~~(a) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or~~

~~(b) Documentation that the unit is emptied at least once every ninety days.~~

~~In addition, such a generator is exempt from all the requirements in sections 33.1-24-05-59 through 33.1-24-05-88, except for sections 33.1-24-05-60 and 33.1-24-05-63;~~

~~b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;~~

~~c. While being accumulated onsite, each container and tank is properly labeled or marked with the words "Hazardous Waste"; and~~

~~d. The generator complies with the requirements for owners or operators in sections 33.1-24-05-15 through 33.1-24-05-36, with section 33.1-24-05-07, and with all applicable requirements under sections 33.1-24-05-250 through 33.1-24-05-299.~~

~~2. A generator of one thousand kilograms or greater of hazardous waste in a calendar month, or greater than one kilogram of acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18 in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than ninety days is an operator of a storage facility and is subject to the requirements of sections 33.1-24-05-01 through 33.1-24-05-190,~~

~~33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-819, 33.1-24-05-950 through 33.1-24-05-1149, subsection 5 of section 33.1-24-06-16 and the permit requirements of chapter 33.1-24-06 unless the generator has been granted an extension to the ninety-day period. Such extension may be granted by the department if hazardous wastes must remain onsite for longer than ninety days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.~~

~~3. A generator may accumulate as much as fifty five gallons of hazardous waste or one quart of acutely hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18 in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsections 1 or 4 provided the operator:~~

~~a. Complies with sections 33.1-24-05-90, 33.1-24-05-91, and subsection 1 of section 33.1-24-05-92; and~~

~~b. Marks the operator's containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.~~

~~c. A generator who accumulates either hazardous waste or acutely hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18 in excess of the amounts listed in subsection 3 at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection 1 or other applicable provisions of this section. During the three-day period, the generator must continue to comply with subdivisions a and b. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.~~

~~4. A generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month may accumulate hazardous waste onsite for one hundred eighty days or less without a permit or without having interim status provided that:~~

~~a. The quantity of waste accumulated onsite never exceeds six thousand kilograms;~~

~~b. The generator complies with requirements of sections 33.1-24-05-89 through 33.1-24-05-102, except sections 33.1-24-05-95 and 33.1-24-05-98;~~

~~c. The generator complies with the requirements of section 33.1-24-05-114;~~

~~d. The generator complies with the requirements of subdivisions b and c of subsection 1, sections 33.1-24-05-12 through 33.1-24-05-21, with all applicable requirements of sections 33.1-24-05-250 through 33.1-24-05-299; and~~

~~e. The generator complies with the following requirements:~~

~~(1) At all times there must be at least one employee either on the premises or oncall (for example, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all the emergency response measures specified in paragraph 4. This employee is the emergency coordinator.~~

~~(2) The generator shall post the following information next to the telephone:~~

~~(a) The name and telephone number of the emergency coordinator;~~

- ~~(b) Location of fire extinguishers and spill control material and, if present, fire alarm; and~~
 - ~~(c) The telephone number of the fire department, unless the facility has a direct alarm.~~
 - ~~(3) The generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;~~
 - ~~(4) An emergency coordinator or the emergency coordinator's designee shall respond to any emergency that arises. The applicable responses are as follows:
 - ~~(a) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;~~
 - ~~(b) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil; and~~
 - ~~(c) In the event of a fire, explosion, or other release which could threaten human health outside the facility, or when the generator has knowledge that a spill has reached surface water, the generator shall immediately notify the national response center using their twenty-four hour toll-free number 1-800-424-8802. The report must include the following information:
 - ~~[1] The name, address, and identification number of the generator;~~
 - ~~[2] Date, time, and type of incident (for example, spill or fire);~~
 - ~~[3] Quantity and type of hazardous waste involved in the incident;~~
 - ~~[4] Extent of injuries, if any; and~~
 - ~~[5] Estimated quantity and disposition of recovered materials, if any.~~~~~~
- ~~5. A generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month and who must transport the waste, or offer the waste for transportation, over a distance of two hundred miles or more for offsite treatment, storage, or disposal may accumulate hazardous waste onsite for two hundred seventy days or less without a permit or without having interim status provided the generator complies with the requirements of subsection 4.~~
- ~~6. A generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding six thousand kilograms or accumulates hazardous waste for more than one hundred eighty days (or for more than two hundred seventy days if the generator shall transport the waste or offer the waste for transportation, over a distance of two hundred miles [321.87 kilometers] or more) is an operator of a storage facility and is subject to the requirements of sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-819, 33.1-24-05-950 through 33.1-24-05-1149, subsection 5 of section 33.1-24-06-16 and the permit requirements of chapter 33.1-24-06 unless the generator has been granted an extension to one hundred eighty days (or two hundred seventy days if applicable). Such extension may be granted by the department if hazardous waste must remain onsite for longer than one hundred eighty days (or two hundred seventy days if~~

applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.

~~7. A generator who generates one thousand kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the hazardous waste code F006, may accumulate F006 waste onsite for more than ninety days, but not more than one hundred eighty days without a permit or without having interim status provided that:~~

~~a. The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;~~

~~b. The F006 waste is legitimately recycled through metals recovery;~~

~~c. No more than twenty thousand kilograms of F006 waste is accumulated onsite at any one time; and~~

~~d. The F006 waste is managed in accordance with the following:~~

~~(1) The F006 waste is placed:~~

~~(a) In containers and the generator complies with the applicable requirements of sections 33.1-24-05-89 through 33.1-24-05-102 and sections 33.1-24-05-400 through 33.1-24-05-474;~~

~~(b) In tanks and the generator complies with the applicable requirements of sections 33.1-24-05-103 through 33.1-24-05-117 and sections 33.1-24-05-400 through 33.1-24-05-474, except for subsection 3 of section 33.1-24-05-110 and section 33.1-24-05-113;~~

~~(c) In containment buildings and the generator complies with sections 33.1-24-05-475 through 33.1-24-05-500, and has placed its professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:~~

~~[1] A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the generator is complying with the procedures;
or~~

~~[2] Documentation that the unit is emptied at least once every one hundred eighty days.~~

~~(d) Or any combination of subparagraphs a, b, and c, as applicable;~~

~~(2) In addition, such a generator is exempt from all the requirements in sections 33.1-24-05-59 through 33.1-24-05-88, except for sections 33.1-24-05-60 and 33.1-24-05-63;~~

~~(3) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;~~

- ~~(4) While being accumulated onsite, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and~~
- ~~(5) The generator complies with the requirements for owners or operators in sections 33.1-24-05-15 through 33.1-24-05-36, with section 33.1-24-05-07, and with subdivision e of subsection 1 of section 33.1-24-05-256.~~
- ~~8. A generator who generates one thousand kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the hazardous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of two hundred miles [321.87 kilometers] or more for offsite metals recovery, may accumulate F006 waste onsite for more than ninety days, but not more than two hundred seventy days without a permit or without having interim status if the generator complies with the requirements of subdivisions a through d of subsection 7.~~
- ~~9. A generator accumulating F006 waste in accordance with subsections 7 and 8 who accumulates F006 waste onsite for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles [321.87 kilometers] or more), or who accumulates more than twenty thousand kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-819, 33.1-24-05-950 through 33.1-24-05-1149, subsection 5 of section 33.1-24-06-16, and the permit requirements of chapter 33.1-24-06 unless the generator has been granted an extension to the one hundred eighty day (or two hundred seventy day if applicable) period or an exception to the twenty thousand kilogram accumulation limit. Such extensions and exceptions may be granted by the department if F006 waste must remain onsite for longer than one hundred eighty days (or two hundred seventy days if applicable) or if more than twenty thousand kilograms of F006 waste must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the department on a case-by-case basis.~~
- ~~10. A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of section 33.1-24-05-39 may accumulate the returned waste onsite in accordance with subsections 1 and 2 or 4, 5, and 6, depending on the amount of hazardous waste onsite in that calendar month. Upon receipt of the returned shipment, the generator must:~~
- ~~a. Sign item 18c of the manifest, if the transporter returned the shipment using the original manifest; or~~
- ~~b. Sign item 20 of the manifest, if the transporter returned the shipment using a new manifest.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-17. Exports of hazardous waste.

Repealed effective July 1, 2020.

~~Sections 33.1-24-03-17 through 33.1-24-03-25 establish requirements applicable to exports of hazardous waste. Except to the extent section 33.1-24-03-25 provides otherwise, a primary exporter of hazardous waste must comply with the special requirements of sections 33.1-24-03-17 through 33.1-24-03-25 and a transporter transporting hazardous waste for export shall comply with applicable requirements of chapter 33.1-24-04. Section 33.1-24-03-25 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste for shipments between the United States and those countries.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-18. Definitions.

~~Repealed effective July 1, 2020.~~

~~In addition to the definitions set forth in section 33.1-24-01-04, the following definitions apply to sections 33.1-24-03-17 through 33.1-24-03-25:~~

- ~~1. "Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.~~
- ~~2. "Environmental protection agency acknowledgment of consent" means the cable sent to the environmental protection agency from the United States embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.~~
- ~~3. "Primary exporter" means any person who is required to originate the manifest for a shipment of a hazardous waste in accordance with chapter 33.1-24-03, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.~~
- ~~4. "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).~~
- ~~5. "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-19. General requirements.

~~Repealed effective July 1, 2020.~~

~~Exports of hazardous wastes are prohibited except in compliance with the applicable requirements of sections 33.1-24-03-17 through 33.1-24-03-25 and chapter 33.1-24-04. Exports of hazardous waste are prohibited unless:~~

- ~~1. Notification in accordance with section 33.1-24-03-20 has been provided;~~
- ~~2. The receiving country has consented to accept the hazardous waste;~~

- ~~3. A copy of the environmental protection agency acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)); and~~
- ~~4. The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the environmental protection agency acknowledgment of consent.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-20. Notification of intent to export.

Repealed effective July 1, 2020.

- ~~1. A primary exporter of hazardous waste shall notify the department and the environmental protection agency of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped offsite. This notification may cover export activities extending over a twelve-month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:
 - ~~a. Name, mailing address, telephone number, and identification number of the primary exporter; and~~
 - ~~b. By consignee, for each hazardous waste type:
 - ~~(1) A description of the hazardous waste and hazardous waste number (from chapter 33.1-24-02), United States department of transportation proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 CFR part 171-177;~~
 - ~~(2) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;~~
 - ~~(3) The estimated total quantity of the hazardous waste in units as specified in the instructions to the uniform hazardous waste manifest form (8700-22);~~
 - ~~(4) All points of entry to and departure from each foreign country through which the hazardous waste will pass;~~
 - ~~(5) A description of the means by which each shipment of the hazardous waste will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.)), types of container (drums, boxes, tanks, etc.);~~
 - ~~(6) A description of the manner in which the hazardous waste will be treated, stored, or disposed of in the receiving country (for example, land or ocean incineration, other land disposal, ocean dumping, recycling);~~
 - ~~(7) The name and site address of the consignee and any alternate consignee; and~~
 - ~~(8) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there.~~~~~~
- ~~2. Notifications sent by mail must be sent to the department and to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200~~

Pennsylvania Avenue NW, Washington, D.C. 20460. Hand delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Building, Room 6144, 12th Street and Pennsylvania Avenue NW, Washington, D.C. 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export".

- ~~3. Except for changes to the telephone number in subdivision a of subsection 1, changes to paragraph 5 of subdivision b of subsection 1, and decreases in the quantity indicated pursuant to paragraph 3 of subdivision b of subsection 1 when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter shall provide the department and the environmental protection agency with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph 8 of subdivision b of subsection 1 and in the ports of entry to and departure from transit countries pursuant to paragraph 4 of subdivision b of subsection 1) has been obtained and the primary exporter receives an environmental protection agency acknowledgment of consent reflecting the receiving country's consent to the changes.~~
- ~~4. Upon request by the department or the environmental protection agency, a primary exporter shall furnish to the department or the environmental protection agency any additional information which a receiving country requests in order to respond to a notification.~~
- ~~5. A notification is complete when the department receives a notification which the department determines satisfies the requirements of subsection 1 and the requirements of the environmental protection agency such that an environmental protection agency acknowledgment of consent is issued to the primary exporter.~~
- ~~6. The primary exporter shall provide the department with a copy of the environmental protection agency acknowledgment of consent prior to shipment offsite.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-21. Special manifest requirements.

Repealed effective July 1, 2020.

- ~~A primary exporter shall comply with the manifest requirements of sections 33.1-24-03-04 through 33.1-24-03-07 except that:~~
- ~~1. In lieu of the name, site address, and identification number of the designated permitted facility, the primary exporter shall enter the name and site address of the consignee;~~
 - ~~2. In lieu of the name, site address, and identification number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;~~
 - ~~3. In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and state) from the United States;~~
 - ~~4. The following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form: "and conforms to the terms of the attached environmental protection agency acknowledgment of consent";~~

- ~~5. The primary exporter may obtain the manifest from any source that is registered with the United States environmental protection agency as a supplier of manifests (for example, states, waste handlers, or commercial forms printers);~~
- ~~6. The primary exporter shall require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in subsection 1 of section 33.1-24-05-39) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;~~
- ~~7. In lieu of the requirements of subsection 4 of section 33.1-24-03-04, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:
 - ~~a. Renotify the state and the environmental protection agency of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with subsection 3 of section 33.1-24-03-20 and obtain an environmental protection agency acknowledgment of consent prior to delivery; or~~
 - ~~b. Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and~~
 - ~~c. Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.~~~~
- ~~8. The primary exporter shall attach a copy of the environmental protection agency acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipments), the primary exporter shall provide the transporter with an environmental protection agency acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipments) the primary exporter shall attach the copy of the environmental protection agency acknowledgment of consent to the shipping paper; and~~
- ~~9. The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with subdivision d of subsection 7 of section 33.1-24-04-04.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-22. Exception reports for exporters.

~~Repealed effective July 1, 2020.~~

- ~~In lieu of the requirements of section 33.1-24-03-15, a primary exporter shall file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460 and the department if any of the following occurs:~~
- ~~1. The primary exporter has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five days from the date it was accepted by the initial transporter; or~~
 - ~~2. Within ninety days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received; or~~

~~3. The waste is returned to the United States.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-23. Annual reports for exporters.

Repealed effective July 1, 2020.

~~1. Primary exporters of hazardous waste shall file with the environmental protection agency administrator and the department no later than March first of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports must include the following:~~

~~a. The identification number, name, mailing, and site address of the exporter;~~

~~b. The calendar year covered by the report;~~

~~c. The name and site address of each consignee;~~

~~d. By consignee, for each hazardous waste exported, a description of the hazardous waste, the hazardous waste number (from chapter 33.1-24-02), department of transportation hazard class, the name and identification number (where applicable) for each transporter used, the total amount of waste shipped, and number of shipments pursuant to each notification;~~

~~e. Except for hazardous waste produced by exporters of greater than one hundred kilograms but less than one thousand kilograms in a calendar month, unless provided pursuant to section 33.1-24-03-14, in even-numbered years:~~

~~(1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and~~

~~(2) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.~~

~~f. A certification signed by the primary exporter which states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.~~

~~2. Annual reports submitted by mail must be sent to the department and to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Building, Room 6144, 12th Street and Pennsylvania Avenue NW, Washington, D.C. 20004.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-24. Recordkeeping.

Repealed effective July 1, 2020.

- ~~1. For all exports a primary exporter shall:
 - ~~a. Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;~~
 - ~~b. Keep a copy of each environmental protection agency acknowledgment of consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;~~
 - ~~c. Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and~~
 - ~~d. Keep a copy of each annual report for a period of at least three years from the due date of the report.~~~~
- ~~2. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department or the administrator.~~

~~History:~~ Effective January 1, 2019.

~~General Authority:~~ NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

~~Law Implemented:~~ NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-25. International agreements.

Repealed effective July 1, 2020.

- ~~1. Any person who exports or imports wastes that are considered hazardous under United States national procedures to or from designated member countries of the organization for economic cooperation and development as defined in subdivision a for purposes of recovery is subject to sections 33.1-24-03-50 through 33.1-24-03-59. The requirements of sections 33.1-24-03-17 through 33.1-24-03-25 and section 33.1-24-03-30 do not apply to such exports and imports. A waste is considered hazardous under United States national procedures if the waste meets the federal definition of hazardous waste in 40 CFR 261.3 and is subject to manifesting requirements at sections 33.1-24-03-04 through 33.1-24-03-07, the universal waste management standards of sections 33.1-24-05-700 through 33.1-24-05-799 or the export requirements in the spent lead-acid battery management standards of sections 33.1-24-05-235 through 33.1-24-05-249.
 - ~~a. For the purposes of sections 33.1-24-03-50 through 33.1-24-03-59, the designated organization for economic cooperation and development member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.~~
 - ~~b. For the purposes of sections 33.1-24-03-50 through 33.1-24-03-59, Canada and Mexico are considered organization for economic cooperation and development member countries only for the purposes of transit.~~~~

- ~~2. Any person who exports hazardous waste to or imports hazardous waste from: A designated organization for economic cooperation and development member country for purposes other than recovery (for example, incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of sections 33.1-24-03-17 through 33.1-24-03-25 and section 33.1-24-03-30, and is not subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59.~~

History: Effective January 1, 2019.

General Authority: NDGC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDGC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-26. ~~[Reserved]~~ Conditions for exemption for a very small quantity generator.

Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of chapters 33.1-24-03 through 33.1-24-07, except section 33.1-24-03-01, section 33.1-24-03-02, subsection 2 of section 33.1-24-03-03, and section 33.1-24-03-26, and the notification requirements of section 33.1-24-03-03 and the very small quantity generator may accumulate hazardous waste onsite without complying with such requirements. The conditions for exemption are as follows:

1. In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in section 33.1-24-01-04;
2. The very small quantity generator complies with the hazardous waste determination requirements of section 33.1-24-03-02;
3. If the very small quantity generator accumulates at any time greater than one kilogram [2.2 pounds] of acute hazardous waste or one hundred kilograms [220 pounds] of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 and subsection 5 of section 33.1-24-02-18, all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:
 - a. Such waste is held onsite for no more than ninety days beginning on the date when the accumulated wastes exceed the amounts provided above; and
 - b. The conditions for exemption in section 33.1-24-03-29.
4. If the very small quantity generator accumulates at any time one thousand kilograms [2,200 pounds] or greater of nonacute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:
 - a. Such waste is held onsite for no more than one hundred eighty days, or two hundred seventy days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided above;
 - b. The quantity of waste accumulated onsite never exceeds six thousand kilograms [13,200 pounds]; and
 - c. The conditions for exemption in 33.1-24-03-28.
5. A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in subsections 3 and 4 must either treat or dispose of its hazardous waste in an onsite facility or ensure delivery to an offsite treatment, storage, or disposal facility, either of which, if located in the United States, is:

- a. Permitted under chapter 33.1-24-06, or in interim status under section 33.1-24-06-16;
 - b. Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;
 - c. Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to section 33.1-20-06.1;
 - d. Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit, is subject to the requirements in 40 CFR 257.5 through 257.30;
 - e. A facility which:
 - (1) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
 - (2) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.
 - f. For universal waste managed under sections 33.1-24-05-700 through 33.1-24-05-799, a universal waste handler or destination facility subject to the requirements of those sections;
 - g. A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:
 - (1) The very small quantity generator and the large quantity generator are under the control of the same person as defined in section 33.1-24-01-04. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in section 33.1-24-01-04 shall not be deemed to "control" such generators.
 - (2) The very small quantity generator marks its container of hazardous waste with:
 - (a) The words "hazardous waste"; and
 - (b) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);
 - h. For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of subsection 10 of section 33.1-24-02-04.
6. The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
 7. A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with subsection 2 of section 33.1-24-03-34.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-27. [Reserved] Satellite accumulation area regulations for small and large quantity generators.

A generator may accumulate as much as fifty-five gallons of nonacute hazardous waste and either one quart of liquid (or one kilogram [2.2 pounds] of solid) acute hazardous waste or both listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18 in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of sections 33.1-24-05-01 through 33.1-24-05-249, sections 33.1-24-05-300 through 33.1-24-05-599, chapter 33.1-24-06, and chapter 33.1-24-07, provided that all of the conditions for exemption in this section are met. A generator may comply with the conditions for exemption in this section instead of complying with the conditions for exemption in subsection 2 of section 33.1-24-03-28 or subsection one of section 33.1-24-03-29, except as required in subsections 7 and 8. The conditions for exemption for satellite accumulation are:

1. If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator shall immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak. Or, immediately transfer and manage the waste in a central accumulation area operated in compliance with subsection 2 of section 33.1-24-03-28 or subsection one of section 33.1- 24-03-29;
2. The generator must use a container made of, or lined with, materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired;
3. Special standards for incompatible wastes.
 - a. Incompatible wastes, or incompatible wastes and materials, examples provided in Appendix III of chapter 33.1-24-05, must not be placed in the same container, unless subsection 2 of section 33.1- 24-05-08 is complied with;
 - b. Hazardous waste may not be placed in an unwashed container that previously held an incompatible waste or material (see appendix III of chapter 33.1-24-05 for examples) unless subsection 2 of section 33.1-24-05-08 is complied with;
 - c. A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers must be separated from the other materials or protected from them by any practical means.
4. A container holding hazardous waste must be closed at all times during accumulation, except:
 - a. When adding, removing, or consolidating waste; or
 - b. When temporary venting of a container is necessary for the proper operation of equipment or to prevent dangerous situations, such as buildup of extreme pressure.
5. A generator must mark or label its container with the following:
 - a. The words "Hazardous Waste"; and
 - b. An indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).

6. A generator who accumulates either acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18 or nonacute hazardous waste in excess of the amounts listed in this section at or near any point of generation must do the following:
 - a. Comply within three consecutive calendar days with the applicable central accumulation area regulations in subsection 2 of section 33.1-24-03-28 or subsection 1 of section 33.1-24-03-29; or
 - b. Remove the excess from the satellite accumulation area within three consecutive calendar days to either:
 - (1) A central accumulation area operated in accordance with the applicable regulations in subsection 2 of section 33.1-24-03-28 or subsection 1 of section 33.1-24-03-29;
 - (2) An onsite interim status or permitted treatment, storage, or disposal facility; or
 - (3) An offsite designated facility; and
 - c. During the three-consecutive-calendar-day period the generator must continue to comply with subsections 1 through 5. The generator shall mark or label the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.
7. All satellite accumulation areas operated by a small quantity generator shall meet the preparedness and prevention regulations of subsection 8 of section 33.1-24-03-28 and emergency procedures at subsection 9 of section 33.1-24-03-28.
8. All satellite accumulation areas operated by a large quantity generator shall meet the preparedness, prevention, and emergency procedures in sections 33.1-24-05-15 through 33.1-24-05-36.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-28. ~~Reserved~~ Conditions for exemption for a small quantity generator that accumulates hazardous waste.

A small quantity generator may accumulate hazardous waste onsite without a permit or interim status, and without complying with the requirements of sections 33.1-24-05-01 through 33.1-24-05-249, sections 33.1-24-05-300 through 33.1-24-05-599, chapter 33.1-24-06, and chapter 33.1-24-07, provided that all the conditions for exemption listed in this section are met:

1. **Generation.** The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in section 33.1-24-01-04.
2. **Accumulation.** The generator accumulates hazardous waste onsite for no more than one hundred eighty days, unless in compliance with the conditions for exemption for longer accumulation in subsections 11 and 12. The following accumulation conditions also apply:
 - a. **Accumulation limit.** The quantity of hazardous waste accumulated onsite never exceeds six thousand kilograms [13,200 pounds];
 - b. **Accumulation of hazardous waste in containers.** Hazardous waste accumulated in containers must meet these requirements:
 - (1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator must immediately transfer the hazardous waste

from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section.

- (2) The small quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.
- (3) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.
- (4) A container holding hazardous waste must not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.
- (5) At least weekly, the small quantity generator shall inspect central accumulation areas. The small quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See subparagraph 1 for remedial action required if deterioration or leaks are detected.
- (6) Incompatible wastes, or incompatible wastes and materials, (see appendix III of chapter 33.1-24-05 for examples) must not be placed in the same container, unless subsection 2 of section 33.1-24-05-08 is complied with.
- (7) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix III of chapter 33.1-24-05 for examples), unless subsection 2 of section 33.1-24-05-08 is complied with.
- (8) A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

3. Accumulation of hazardous waste in tanks. Hazardous waste accumulated in tanks must meet the following requirements:

- a. A small quantity generator of hazardous waste must comply with the following general operating conditions:
 - (1) Treatment or accumulation of hazardous waste in tanks must comply with subsection 2 of section 33.1-24-05-08.
 - (2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.
 - (3) Uncovered tanks must be operated to ensure at least sixty centimeters [2 feet] of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top sixty centimeters [2 feet] of the tank.
 - (4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or bypass system to a standby tank).

b. Except as noted in subdivision c, a small quantity generator that accumulates hazardous waste in tanks must inspect, where present:

(1) Discharge control equipment (e.g., waste feed cutoff systems, bypass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(3) The level of waste in the tank at least once each operating day to ensure compliance with paragraph 3 of subdivision a of subsection 3 of section 33.1-24-03-28;

(4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

c. A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in subdivision b. Use of the alternate inspection schedule must be documented in the generator's operating record. This documentation must include a description of the established workplace practices at the generator.

d. A small quantity generator accumulating hazardous waste in tanks, upon closure of the facility, shall remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with subsections 3 or 4 of section-24-02-03, that any solid waste removed from its tank is not a hazardous waste, then it must manage such waste in accordance with all applicable provisions of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-250 through 33.1-24-05-399.

e. A small quantity generator shall comply with the following special conditions for accumulation of ignitable or reactive waste:

(1) Ignitable or reactive waste must not be placed in a tank, unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under sections 33.1-24-02-11 and 33.1-24-02-13, and subsection 2 of section 33.1-24-05-08 is complied with;

(b) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(c) The tank is used solely for emergencies.

(2) A small quantity generator that treats or accumulates ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the national fire protection association's "Flammable and Combustible Liquids Code" (1977 or 1981) which are incorporated by reference in section 33.1-24-01-05.

(3) A small quantity generator shall comply with the following special conditions for incompatible wastes:

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix III of chapter 33.1-24-05 for examples) may not be placed in the same tank, unless subsection 2 of section 33.1-24-05-08 is complied with.

(b) Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material, unless subsection 2 of section 33.1-24-05-08 is complied with.

4. Accumulation of hazardous waste on drip pads. If the waste is placed on drip pads, the small quantity generator shall comply with the following:

a. The applicable drip pad requirements of sections 33.1-24-05-501 through 33.1-24-05-524;

b. The small quantity generator must remove all wastes from the drip pad at least once every ninety days. Any hazardous wastes that are removed from the drip pad at least once every ninety days are then subject to the one hundred eighty-day accumulation limit in subsection 2 and section 33.1-24-03-27 if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

c. The small quantity generator shall maintain onsite at the facility the following records readily available for inspection:

(1) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and

(2) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

5. Accumulation of hazardous waste in containment buildings. If the waste is placed in containment buildings, the small quantity generator shall comply with sections 33.1-24-05-475 through 33.1-24-05-500. The generator shall label its containment buildings with the words "hazardous waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons onsite and also in a conspicuous place provide an indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704). The generator also shall maintain:

a. The professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476. This certification must be in the generator's files prior to operation of the unit; and

b. The following records by use of inventory logs, monitoring equipment, or any other effective means:

(1) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with maintaining the ninety day limit, and documentation that the procedures are complied with; or

(2) Documentation that the unit is emptied at least once every ninety days.

c. Inventory logs or records with the above information must be maintained onsite and readily available for inspection.

6. Labeling and marking of containers and tanks.

a. Containers. A small quantity generator shall mark or label its containers with the following:

(1) The words "hazardous waste";

(2) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704); and

(3) The date upon which each period of accumulation begins clearly visible for inspection on each container.

b. Tanks. A small quantity generator accumulating hazardous waste in tanks shall do the following:

(1) Mark or label its tanks with the words "hazardous waste";

(2) Mark or label its tanks with an indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);

(3) Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within one hundred eighty days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within one hundred eighty days of first entering; and

(4) Keep inventory logs or records with the above information onsite and readily available for inspection.

7. Land disposal restrictions. A small quantity generator shall comply with all the applicable requirements in sections 33.1-24-05-250 through 33.1-24-05-299.

8. Preparedness and prevention.

- a. **Maintenance and operation of facility.** A small quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.
- b. **Required equipment.** All areas where hazardous waste is either generated or accumulated must be equipped with the following items (unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A small quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies.
- (1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
 - (2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
 - (3) Portable fire extinguishers; fire control equipment, (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals); spill control equipment; and decontamination equipment; and
 - (4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.
- c. **Testing and maintenance of equipment.** All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in times of emergency.
- d. **Access to communications or alarm system.**
- (1) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (e.g., direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under subdivision of subsection 8 of 33.1-24-03-28.
 - (2) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (e.g., direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under subdivision b of subsection 8 of section 33.1-24-03-28.
- e. **Required aisle space.** The small quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
- f. **Arrangements with local authorities.**

(1) The small quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the local emergency planning committee, if it is determined to be the appropriate organization with which to make arrangements.

(a) A small quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals.

(b) As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(c) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(2) A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(3) A facility possessing twenty-four-hour response capabilities may seek a waiver from the authority having jurisdiction over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

9. **Emergency procedures.** The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated:

a. At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subdivision d. This employee is the emergency coordinator.

b. The small quantity generator shall post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

(1) The name and emergency telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

c. The small quantity generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

d. The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

(3) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator shall immediately notify the National Response Center (using their 24-hour toll free number 800-424-8802). The report must include the following information:

(a) The name, address, and United States environmental protection agency identification number of the small quantity generator;

(b) Date, time, and type of incident (e.g., spill or fire);

(c) Quantity and type of hazardous waste involved in the incident;

(d) Extent of injuries, if any; and

(e) Estimated quantity and disposition of recovered materials, if any.

10. **Transporting over two hundred miles.** A small quantity generator who shall transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for offsite treatment, storage, or disposal may accumulate hazardous waste onsite for two hundred seventy days or less without a permit or without having interim status provided that the generator complies with the conditions of subsection 2.

11. **Accumulation time limit extension.** A small quantity generator who accumulates hazardous waste for more than one hundred eighty days (or for more than two hundred seventy days if it must transport its waste, or offer its waste for transportation, over a distance of two hundred miles or more) is subject to the requirements of chapters 33.1-24-05 and 33.1-24-06 unless it has been granted an extension to the one hundred eighty-day (or two hundred seventy-day if applicable) period. Such extension may be granted if hazardous wastes must remain onsite for longer than one hundred eighty days (or two hundred seventy days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.

12. **Rejected load.** A small quantity generator that sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of section 33.1-24-05-39 may accumulate the returned waste onsite in accordance with subsections 1 through 11. Upon receipt of the returned shipment, the generator must:

- a. Sign item 18c of the manifest, if the transporter returned the shipment using the original manifest; or
- b. Sign item 20 of the manifest, if the transporter returned the shipment using a new manifest.

13. A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with section 33.1-24-03-34 of this part in lieu of section 33.1-24-03-29.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-29. ~~[Reserved]~~Conditions for exemption for a large quantity generator that accumulates hazardous waste.

A large quantity generator may accumulate hazardous waste onsite without a permit or interim status, and without complying with the requirements of sections 33.1-24-05-01 through 33.1-24-05-249, sections 33.1-24-05-300 through 33.1-24-05-599, chapter 33.1-24-06, and chapter 33.1-24-07, provided that all of the following conditions for exemption are met:

1. **Accumulation.** A large quantity generator accumulates hazardous waste onsite for no more than ninety days, unless in compliance with the accumulation time limit extension in subsection 2 or F006 accumulation conditions for exemption in subsection 3. The following accumulation conditions also apply:
 - a. **Accumulation of hazardous waste in containers.** If the hazardous waste is placed in containers, the large quantity generator must comply with the following:
 - (1) **Air emission standards.** The applicable requirements of sections 33.1-24-05-400 through 33.1-24-05-474;
 - (2) **Condition of containers.** If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;
 - (3) **Compatibility of waste with container.** The large quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;
 - (4) **Management of containers.**
 - (a) A container holding hazardous waste always must be closed during accumulation, except when it is necessary to add or remove waste.
 - (b) A container holding hazardous waste may not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.
 - (5) **Inspections.** At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph 2 of subdivision a of subsection 1 of section 33.1-24-03-29 of this section for remedial action required if deterioration or leaks are detected.

(6) Special conditions for accumulation of ignitable and reactive wastes.

- (a) Containers holding ignitable or reactive waste must be located at least fifteen meters [50 feet] from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval must be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.
- (b) The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction, including the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(7) Special conditions for accumulation of incompatible wastes.

- (a) Incompatible wastes, or incompatible wastes and materials, (see appendix III of chapter 33.1-24-05 for examples) may not be placed in the same container, unless subsection 2 of section 33.1-24-05-08 is complied with.
 - (b) Hazardous waste may not be placed in an unwashed container that previously held an incompatible waste or material (see appendix III of chapter 33.1-24-05 for examples), unless subsection 2 of section 33.1-24-05-08 is complied with.
 - (c) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.
- b. **Accumulation of hazardous waste in tanks.** If the waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of sections 33.1-24-05-103 through subsection 3 of section 33.1-24-05-110 of closure and postclosure care and section 33.1-24-05-113 - Waste analysis and trial tests, as well as the applicable requirements of sections 33.1-24-05-400 through 33.1-24-05-474.
- c. **Accumulation of hazardous waste on drip pads.** If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following:
- (1) The applicable drip pad requirements of sections 33.1-24-05-501 through 33.1-24-05-524;
 - (2) The large quantity generator shall remove all wastes from the drip pad at least once every ninety days. Any hazardous wastes that are removed from the drip pad are then subject to the ninety-day accumulation limit in subsection 1 of this section and section 33.1-24-03-27, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and
 - (3) The large quantity generator shall maintain onsite at the facility the following records readily available for inspection:

(a) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and

(b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

d. **Accumulation of hazardous waste in containment buildings.** If the waste is placed in containment buildings, the large quantity generator shall comply with sections 33.1-24-05-475 through 33.1-24-05-500. The generator shall label its containment building with the words "hazardous waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons onsite, and also in a conspicuous place provide an indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704). The generator must also maintain:

(1) The professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476. This certification must be in the generator's files prior to operation of the unit; and

(2) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(a) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or

(b) Documentation that the unit is emptied at least once every ninety days.

(c) Inventory logs or records with the above information must be maintained onsite and readily available for inspection.

e. **Labeling and marking of containers and tanks.**

(1) **Containers.** A large quantity generator shall mark or label its containers with the following:

(a) The words "hazardous waste";

(b) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704); and

(c) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(2) **Tanks.** A large quantity generator accumulating hazardous waste in tanks shall do the following:

(a) Mark or label its tanks with the words "hazardous waste";

(b) Mark or label its tanks with an indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);

(c) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within ninety days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within ninety days of first entering; and

(d) Keep inventory logs or records with the above information onsite and readily available for inspection.

f. **Emergency procedures.** The large quantity generator complies with the standards in sections 33.1-24-05-15 through 33.1-24-05-36.

g. **Personnel training.**

(1) Facility personnel must successfully complete a program of classroom instruction, online training (e.g., computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator shall ensure that this program includes all the elements described subparagraph b.

(a) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

(b) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

[1] Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

[2] Key parameters for automatic waste feed cut-off systems;

[3] Communications or alarm systems;

[4] Response to fires or explosions;

[5] Response to ground-water contamination incidents; and

[6] Shutdown of operations.

- (2) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the conditions of exemption in this section.
 - (3) Facility personnel successfully shall complete the program required in subdivision g of subsection 1 of section 33.1-24-03-29 within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees may not work in unsupervised positions until they have completed the training standards of subdivision g of subsection 1 of section 33.1-24-03-29.
 - (4) Facility personnel shall take part in an annual review of the initial training required in subdivision g of subsection 1 of section 33.1-24-03-28.
 - (5) The large quantity generator shall maintain the following documents and records at the facility:
 - (a) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;
 - (b) A written job description for each position listed under subparagraph a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;
 - (c) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under subparagraph a;
 - (d) Records that document that the required training or job experience has been given to, and completed by, facility personnel.
 - (6) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.
- h. **Closure.** A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, shall meet the following conditions:
- (1) **Notification for closure of a waste accumulation unit.** A large quantity generator shall perform one of the following when closing a waste accumulation unit:
 - (a) Place a notice in the operating record within thirty days after closure identifying the location of the unit within the facility; or
 - (b) Meet the closure performance standards of paragraph 3 for container, tank, and containment building waste accumulation units or paragraph 4 for drip pads and notify environmental protection agency following the procedures in paragraph 2 for the waste accumulation unit. If the waste accumulation unit is

subsequently reopened, the generator may remove the notice from the operating record.

(2) Notification for closure of the facility.

- (a) Notify the department using form 8700-12 no later than thirty days prior to closing the facility.
- (b) Notify the department using form 8700-12 within ninety days after closing the facility that it has complied with the closure performance standards of paragraph 3 or 4. If the facility cannot meet the closure performance standards of paragraph 3 or 4, notify the department using form 8700-12 that it will close as a landfill under the standards of section 33.1-24-05-180 in the case of a container, tank, or containment building unit, or for a facility with drip pads, notify using form 8700-12 that it will close under the standards of subsection 3 of section 33.1-24-05-506.
- (c) A large quantity generator may request additional time to close, but it must notify the department using form 8700-12 within seventy-five days after the date provided in subparagraph a to request an extension and provide an explanation as to why the additional time is required.

(3) Closure performance standards for container, tank systems, and containment building waste accumulation units. At closure, the generator shall close the waste accumulation unit or facility in a manner that:

- (a) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.
- (b) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units, including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless subsection 4 of section 33.1-24-02-03 applies.
- (c) Any hazardous waste generated in the process of closing either the generator's facility or unit accumulating hazardous waste must be managed in accordance with all applicable standards of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-250 through 33.1-24-05-399, including removing any hazardous waste contained in these units within ninety days of generating it and managing these wastes in a Resource Conservation and Recovery Act Subtitle C hazardous waste permitted treatment, storage and disposal facility or interim status facility.
- (d) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in subparagraph b of paragraph 3 of subdivision h of subsection 1 of section 33.1-24-03-29, then the waste accumulation unit is considered to be a landfill and the generator shall close the waste accumulation unit and perform postclosure care in accordance with the closure and post-closure care requirements that apply to landfills (section 33.1-24-05-180). In addition, for the purposes of closure, postclosure, and financial responsibility, such a waste accumulation unit is then considered

to be a landfill, and the generator shall meet all of the requirements for landfills specified in sections 33.1-24-05-59 through 33.1-24-05-88.

(4) **Closure performance standards for drip pad waste accumulation units.** At closure, the generator shall comply with the closure requirements of paragraph 2 of subdivision h of subsection 1 of section 33.1-24-03-29 and subparagraphs a and c of paragraph 3 of subdivision h of subsection 1 of section 33.1-24-03-29, and sections 33.1-24-05-505 and 33.1-24-05-506.

(5) The closure requirements of paragraph subdivision h of this subsection do not apply to satellite accumulation areas.

i. **Land disposal restrictions.** The large quantity generator complies with all applicable requirements in sections 33.1-24-05-250 through 33.1-24-05-399.

2. **Accumulation time limit extension.** A large quantity generator who accumulates hazardous waste for more than ninety days is subject to the permit requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, unless it has been granted an extension to the ninety-day period. Such extension may be granted by the department if hazardous wastes must remain onsite for longer than ninety days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.

3. **Accumulation of F006.** A large quantity generator that also generates wastewater treatment sludges from electroplating operations that meet the listing description for the environmental protection agency hazardous waste number F006, may accumulate F006 waste onsite for more than ninety days, but not more than one hundred eighty days without being subject to chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, provided that it complies with all of the following additional conditions for exemption:

a. The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

b. The F006 waste is legitimately recycled through metals recovery;

c. No more than twenty thousand kilograms of F006 waste is accumulated onsite at any one time; and

d. The F006 waste is managed in accordance with the following:

(1) If the F006 waste is placed in containers, the large quantity generator must comply with the applicable conditions for exemption in subdivision a of subsection 1 of section 33.1-24-03-29;

(2) If the F006 is placed in tanks, the large quantity generator must comply with the applicable conditions for exemption of subdivision b of subsection 1 of section 33.1-24-03-29;

(3) If the F006 is placed in containment buildings, the large quantity generator must comply with sections 33.1-24-05-475 through 33.1-24-05-477 and has placed its professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476 in the facility's files prior to operation of the unit. The large quantity generator must maintain the following records:

- (a) A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the large quantity generator is complying with the procedures; or
 - (b) Documentation that the unit is emptied at least once every one hundred eighty days.
 - (4) The large quantity generator is exempt from all the requirements in sections 33.1-24-05-57 through 33.1-24-05-88, except for those referenced in subdivision h of subsection 1 of section 33.1-24-05-29.
 - (5) The date upon which each period of accumulation begins is clearly marked and must be clearly visible for inspection on each container;
 - (6) While being accumulated onsite, each container and tank is labeled or marked clearly with:
 - (a) The words "hazardous waste"; and
 - (b) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).
 - (7) The large quantity generator complies with the requirements in subdivisions f and g.
- e. **F006 transported over two hundred miles.** A large quantity generator that also generates wastewater treatment sludges from electroplating operations that meet the listing description for the environmental protection agency hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more for offsite metals recovery, may accumulate F006 waste onsite for more than ninety days, but not more than two hundred seventy days without being subject to chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, if the large quantity generator complies with all of the conditions for exemption in subdivisions a through d of subsection 3 of section 33.1-24-03-29.
- f. **F006 accumulation time extension.** A large quantity generator accumulating F006 in accordance with subdivisions a through d of subsection 3 of section 33.1-24-03-29 that accumulates F006 waste onsite for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more), or who accumulates more than twenty thousand kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, unless the generator has been granted an extension to the one hundred-day (or two hundred seventy-day if applicable) period or an exception to the twenty thousand kilogram accumulation limit. Such extensions and exceptions may be granted by environmental protection agency if F006 waste must remain onsite for longer than one hundred eighty days (or two hundred seventy days if applicable) or if more than twenty thousand kilograms of F006 waste

must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the regional administrator on a case-by-case basis.

4. Consolidation of hazardous waste received from very small quantity generators. Large quantity generators may accumulate onsite hazardous waste received from very small quantity generators under control of the same person (as defined in section 33.1-24-01-04), without a storage permit or interim status and without complying with the requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.

- a. The large quantity generator notifies the department at least thirty days prior to receiving the first shipment from a very small quantity generator using environmental protection agency form 8700-12;
- b. Identifies on the form the name and site address for the very small quantity generator as well as the name and business telephone number for a contact person for the very small quantity generator; and
- c. Submits an updated Site identification form (environmental protection agency form 8700-12) within thirty days after a change in the name or site address for the very small quantity generator.
- d. The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records must identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.
- e. The large quantity generator complies with the independent requirements identified in subdivision c of subsection 1 of section 33.1-24-03-01 and the conditions for exemption in this section for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in subdivision e of subsection 1 of section 33.1-24-03-29, the large quantity generator shall label the container or unit with the date accumulation started (i.e., the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated onsite.

5. Rejected load. A large quantity generator that sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of section 33.1-24-05-39 may accumulate the returned waste onsite in accordance with subsections 1 through 4. Upon receipt of the returned shipment, the generator must:

- a. Sign item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

- b. Sign item 20 of the manifest, if the transporter returned the shipment using a new manifest.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-30. Imports of hazardous waste.

Repealed effective July 1, 2020.

- ~~1. Any person who imports hazardous waste from a foreign country into the United States shall comply with the requirements of this chapter and the special requirements of this section.~~
- ~~2. When importing a hazardous waste, a person shall meet all the requirements of section 33.1-24-03-04 for the manifest except that:
 - ~~a. In place of the generator's name, address, and identification number, the name and address of the foreign generator and the importer's name, address, and identification number must be used.~~
 - ~~b. In place of the generator's signature on the certification statement, the United States importer or the importer's agent shall sign and date the certification and obtain the signature of the initial transporter.~~~~
- ~~3. A person who imports hazardous waste may obtain the manifest form from any source that is registered with the United States environmental protection agency as a supplier of manifests (for example, states, waste handlers, or commercial forms printers).~~
- ~~4. In the International Shipments block, the importer must check the import box and enter the point of entry (city and state) into the United States.~~
- ~~5. The importer must provide the transporter with additional copies of the manifest to be submitted by the receiving facility to the environmental protection agency and the department in accordance with subdivision c of subsection 1 of section 33.1-24-05-38 and the applicable requirements of subsection 5 of section 33.1-24-06-16.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-34. ~~[Reserved]~~ Alternative standards for episodic generation.

1. Definitions.

- a. "Episodic event" means an activity or activities, planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous waste that exceeds the calendar month quantity limits for the generator's usual category.
- b. "Planned episodic event" means an episodic event the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory.
- c. "Unplanned episodic event" means an episodic event the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or "acts of nature," such as tornado, hurricane, or flood.

2. **Conditions for a very small quantity generator.** A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions:

a. The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under subsection 4 of section 33.1-24-03-34.

b. The very small quantity generator shall notify the department no later than thirty calendar days prior to initiating a planned episodic event using a department-approved form. In the event of an unplanned episodic event, the generator shall notify the department within seventy-two hours of the unplanned event via phone, electronic mail, or fax and subsequently submit notification on an approved form. The generator shall include the start date and end date of the episodic event, the reason for the event, types, and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with twenty-four-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with section 33.1-24-03-28.

c. The very small quantity generator shall have, or obtain, an identification number as defined in section 33.1-24-03-03.

d. A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks, the following conditions apply:

(1) **Containers.** A very small quantity generator accumulating episodic hazardous waste in containers shall mark or label its containers with the following:

(a) The words "episodic hazardous waste";

(b) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristics), hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding), a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200, or a chemical hazard label consistent with the National Fire Protection Association Code 704; and

(c) The date upon which the episodic event began, clearly visible for inspection on each container.

(2) **Tanks.** A very small quantity generator accumulating episodic hazardous waste in tanks shall do the following:

(a) Mark or label the tank with the words "episodic hazardous waste";

(b) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristics), hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding), a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200, or a chemical hazard label consistent with the National Fire Protection Association Code 704;

(c) Use inventory logs, monitoring equipment, or other records to identify the date upon which each episodic event begins; and

- (d) Keep inventory logs or records with the above information onsite and readily available for inspection.
 - (3) Hazardous waste must be managed in a manner that minimizes the possibility of a fire, explosion, or the release of hazardous waste or hazardous waste constituents to the air, soil, or water;
 - (4) Containers must be in good condition and compatible with the hazardous waste being accumulated therein. Containers must be kept closed except to add or remove waste; and
 - (5) Tanks must be in good condition and compatible with the hazardous waste accumulated therein. Tanks must have procedures in place to prevent overflow. Tanks must be inspected at least once each operating day to ensure all applicable discharge control equipment (such as waste feed cutoff systems, bypass systems, and drainage systems) is in good working order; and to ensure the tank is operated according to its design.
- e. The very small quantity generator shall comply with the hazardous waste manifest provisions of sections 33.1-24-03-04 through 33.1-24-03-07 when it sends its episodic event hazardous waste offsite to a designated facility.
- f. The very small quantity generator has up to sixty calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a designated facility.
- g. Very small quantity generators shall maintain the following records for three years from the end date of the episodic event:
 - (1) Beginning and end dates of the episodic event;
 - (2) A description of the episodic event;
 - (3) A description of the types and quantities of hazardous wastes generated during the event;
 - (4) A description of how the hazardous waste was managed as well as the name of the Resource Conservation and Recovery Act-designated facility that received the hazardous waste;
 - (5) Name of the hazardous waste transporter; and
 - (6) Documentation of approval from the department for any additional episodic events in a calendar year.

3. Conditions for small quantity generators. A small quantity generator may maintain its existing generator category during an episodic event provided the generator complies with the following conditions:

- a. The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under subsection 4 of section 33.1-24-03-34.
- b. The small quantity generator shall notify the department no later than thirty calendar days prior to initiating a planned episodic event using a department-approved form. In the event of an unplanned episodic event, the generator shall notify the department within seventy-two hours of the unplanned event via phone, electronic mail, or fax and subsequently submit notification on an approved form. The generator shall include the

start date and end date of the episodic event, the reason for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with twenty-four-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with subdivision a of subsection 9 of section 33.1-24-03-28.

c. The small quantity generator shall have, or obtain, an identification number as defined in section 33.1-24-03-03.

d. A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(1) **Containers.** A small quantity generator accumulating episodic hazardous waste in containers shall mark or label its containers with the following:

(a) The words "episodic hazardous waste";

(b) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristics), hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding), a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200, or a chemical hazard label consistent with the National Fire Protection Association Code 704; and

(c) The date upon which the episodic event began, clearly visible for inspection on each container.

(2) **Tanks.** A small quantity generator accumulating episodic hazardous waste in tanks shall meet the requirements of subsection 3 of section 33.1-24-03-28 and do the following:

(a) Mark or label the tank with the words "episodic hazardous waste";

(b) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristics), hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding), a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200, or a chemical hazard label consistent with the National Fire Protection Association Code 704;

(c) Use inventory logs, monitoring equipment, or other records to identify the date upon which each episodic event begins; and

(d) Keep inventory logs or records with the above information onsite and readily available for inspection.

e. The small quantity generator shall treat hazardous waste generated from an episodic event onsite or manifest and ship such hazardous waste offsite to a designated facility within sixty calendar days from the start of an episodic event.

f. The small quantity generator shall maintain the following records for three years from the end date of the episodic event:

- (1) Beginning and end dates of the episodic event;
- (2) A description of the episodic event;
- (3) A description of the types and quantities of hazardous wastes generated during the event;
- (4) A description of how the hazardous waste was managed as well as the name of the Resource Conservation and Recovery Act-designated facility that received the hazardous waste;
- (5) Name of the hazardous waste transporter; and
- (6) Documentation of approval from the department for any additional episodic events in a calendar year.

4. Petition to manage one additional episodic event per calendar year. A generator may petition for a second episodic event in a calendar year without impacting its generator category under the following conditions:

- a. If a very small quantity or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition for an additional unplanned episodic event in that calendar year within seventy-two hours of the unplanned event.
- b. If a very small quantity or small quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition for an additional planned episodic event in that calendar year.
- c. The petition must include the following:
 - (1) The reason why an additional episodic event is needed and the nature of the episodic event;
 - (2) The estimated amount of hazardous waste to be managed from the event;
 - (3) How the hazardous waste will be managed;
 - (4) The estimated length of time needed to complete management of hazardous waste generated from the episodic event - not to exceed sixty days; and
 - (5) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.
- d. The petition must be made to the department in writing, either on paper or electronically.
- e. The generator shall retain written approval in its records for three years from the date the episodic event ended.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-50. Transboundary movements of hazardous waste for recovery ~~within the organization for economic cooperation and development~~ or disposal.

~~Sections 33.1-24-03-50 through 33.1-24-03-59 establish requirements applicable to transboundary movements of hazardous waste for recovery within the organization for economic cooperation and development.~~

1. ~~The requirements of sections 33.1-24-03-50 through 33.1-24-03-59 apply to imports and exports of wastes that are considered hazardous under United States national procedures and are destined for recovery operations in the countries listed in subdivision a of subsection 1 of section 33.1-24-03-25. A waste is considered hazardous under United States national procedures if the waste:~~

~~a. Meets the federal definition of a hazardous waste in 40 CFR 261.3; and~~

~~b. Is subject to the manifesting requirements of sections 33.1-24-03-04 through 33.1-24-03-07, the universal waste management standards of sections 33.1-24-05-700 through 33.1-24-05-799 or the export requirements in the spent lead-acid battery management standards of sections 33.1-24-05-235 through 33.1-24-05-249~~**transboundary movements of hazardous wastes.**

2. Any person (exporter, importer, **disposal facility operator**, or recovery facility operator) who mixes two or more wastes (including hazardous and nonhazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under chapter 33.1-24-03 and any exporter duties, if applicable, under sections 33.1-24-03-50 through 33.1-24-03-59.

History: Effective January 1, 2019; **amended effective July 1, 2020.**

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-51. Definitions.

In addition to the definitions set forth in section 33.1-24-01-04, the following definitions apply to sections 33.1-24-03-50 through 33.1-24-03-59:

1. "Competent authority" means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes ~~destined for recovery operations.~~
2. "Countries concerned" means the ~~organization for economic cooperation and development member~~ countries of export or import and any ~~organization for economic cooperation and development member~~ countries of transit.
3. "Country of export" means any designated ~~organization for economic cooperation and development member~~ country ~~listed in subdivision a of subsection 1 of section 33.1-24-03-25~~ from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.
4. "Country of import" means any ~~designated organization for economic cooperation and development member~~ country ~~listed in subdivision a of subsection 1 of section 33.1-24-03-25~~ to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery **or disposal** operations therein.
5. "Country of transit" means any ~~designated organization for economic cooperation and development member~~ country ~~listed in subdivisions a and b of subsection 1 of section~~

~~33.1-24-03-25~~ other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

6. "Disposal operations" means activities that do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternate uses, which include the following categories:
- a. D1 - Release or deposit into or onto land, other than by any of operations D2 through D5 or D12.
 - b. D2 - Land treatment, such as biodegradation of liquids or sludges in soils.
 - c. D3 - Deep injection, such as injection into wells, salt domes, or naturally occurring repositories.
 - d. D4 - Surface impoundment, such as placing of liquids or sludges into pits, ponds, or lagoons.
 - e. D5 - Specially engineered landfill, such as placement into lined discrete cells which are capped and isolated from one another and the environment.
 - f. D6 - Release into a water body other than a sea or ocean, and other than by operation D4.
 - g. D7 - Release into a sea or ocean, including sea-bed insertion, other than by operation D4.
 - h. D8 - Biological treatment not specified elsewhere in operations D1 through D12, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.
 - i. D9 - Physical or chemical treatment not specified elsewhere in operations D1 through D12, such as evaporation, drying, calcination, neutralization, or precipitation, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.
 - j. D10 - Incineration on land.
 - k. D11 - Incineration at sea.
 - l. D12 - Permanent storage.
 - m. D13 - Blending or mixing, prior to any of operations D1 through D12.
 - n. D14 - Repackaging, prior to any of operations D1 through D13.
 - o. D15 - (or DC17 for transboundary movements with Canada only) Interim storage, prior to any of operations D1 through D12.
 - p. DC15 - Release, including the venting of compressed or liquefied gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).
 - q. DC16 - Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).
7. "Environmental protection agency acknowledgment of consent" means the letter the environmental protection agency sends to the exporter documenting the specific terms of the country of import's consent and the country or countries of transit's consents. The

acknowledgment of consent meets the definition of an export license in United States census bureau regulations 15 CFR 30.1.

8. "Export" means the transportation of hazardous waste from a location under the jurisdiction of the United States to a location under the jurisdiction of another country, or a location not under the jurisdiction of any country, for the purposes of recovery or disposal operations therein.

9. "Exporter", also known as primary exporter on the hazardous waste manifest, means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States is the country of export, exporter is interpreted to mean a person domiciled in the United States that is required to originate the movement document in accordance with subsection 4 of section 33.1-24-03-53 or the manifest for a shipment of hazardous waste in accordance with sections 33.1-24-03-04 through 33.1-24-03-07 which specifies a foreign receiving facility at the facility to which the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

7.10. "Foreign exporter" means the person under the jurisdiction of the country of export that has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the hazardous wastes and who proposes shipment of the hazardous wastes to the United States for recovery or disposal operations.

11. "Foreign importer" means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the exported hazardous waste is received in the country of import.

12. "Foreign receiving facility" means a facility that, under the importing country's applicable domestic law, is operating or is authorized to operate in the country of import to receive the hazardous wastes and to perform recovery or disposal operations on the hazardous waste.

13. "Import" means the transportation of hazardous waste from a location under the jurisdiction of another country to a location under the jurisdiction of the United States for the purposes of recovery or disposal operations therein.

14. "Importer" means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the country of importUnited States.

8.15. "Organization for economic cooperation and development area" means all land or marine areas under the national jurisdiction of any organization for economic cooperation and development member country listed in section 33.1-24-03-25. When the regulations refer to shipments to or from an organization for economic cooperation and development member country, this means organization for economic cooperation and development area.

~~9. "OECD" means the organization for economic cooperation and development.~~

~~10. "Recognized trader" means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.~~

~~11. "Recovery facility" means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.~~

~~42-16.~~ "Organization for Economic Cooperation and Development member country" means the countries that are members of the Organization for Economic Cooperation and Development and participate in the Amended 2001 Organization for Economic Cooperation and Development Decision. (environmental protection agency provides a list of Organization for Economic Cooperation and Development member countries at <https://www.epa.gov/hwgenerators/international-agreements-transboundary-shipments-waste>).

17. "Receiving facility" means a United States facility that, under the Resource Conservation and Recovery Act and other applicable domestic laws, is operating or is authorized to operate to receive hazardous wastes and to perform recovery or disposal operations on them.

18. "Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses, which include:

- a. R1 – Use as a fuel (other than in direct incineration) or other means to generate energy.
- b. R2 – Solvent reclamation/regeneration.
- c. R3 – Recycling/reclamation of organic substances which are not used as solvents.
- d. R4 – Recycling/reclamation of metals and metal compounds.
- e. R5 – Recycling/reclamation of other inorganic materials.
- f. R6 – Regeneration of acids or bases.
- g. R7 – Recovery of components used for pollution abatement.
- h. R8 – Recovery of components used from catalysts.
- i. R9 – Used oil rerefining or other reuses of previously used oil.
- j. R10 – Land treatment resulting in benefit to agriculture or ecological improvement.
- k. R11 – Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).
- l. R12 – Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).
- m. R13 – Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).
- n. RC14 - Recovery or regeneration of a substance or use or reuse of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).
- o. RC15 - Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).
- p. RC16 - Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).

~~43-19.~~ "Transboundary movement" means any movement of hazardous wastes from an area under the national jurisdiction of one ~~organization for economic cooperation and development member~~ country to an area under the national jurisdiction of another ~~organization for economic cooperation and development member~~ country.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-52. General conditions.

1. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the green control procedures or a list of wastes subject to the amber control procedures and ~~by the national procedures of the United States, as defined in subsection 1 of section 33.1-24-03-50~~ whether the waste is or is not hazardous waste. The organization for economic cooperation and development green and amber lists are incorporated by reference in ~~subsection 4 of section 33.1-24-03-59~~ subsection 7 of section 33.1-24-01-05.
 - a. ~~Listed wastes subject to the green control procedures~~ Green list wastes.
 - (1) Green wastes that are not ~~considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~ wastes are subject to existing controls normally applied to commercial transactions, and are not subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.
 - (2) Green wastes that are ~~considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~ wastes are subject to the ~~amber control procedures set forth in~~ requirements of sections 33.1-24-03-50 through 33.1-24-03-59.
 - b. ~~Listed wastes subject to the amber control procedures~~ Amber list wastes.
 - (1) Amber wastes that are ~~considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~ wastes are subject to the ~~amber control procedures set forth in~~ requirements of sections 33.1-24-03-50 through 33.1-24-03-59, even if they are imported to or exported from a country that does not consider the waste to be hazardous or control the transboundary shipment as a hazardous waste import or export.
 - (a) For exports, the exporter must comply with section 33.1-24-03-53.
 - (b) For imports, the recovery or disposal facility and the importer must comply with section 33.1-24-03-55.
 - (2) ~~Amber wastes that are considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50, are subject to the amber control procedures in the United States, even if they are imported to or exported from a designated member country listed in subdivision a of subsection 1 of section 33.1-24-03-25 that does not consider the waste to be hazardous. In such an event, the responsibilities of the amber control procedures shift as provided:~~
 - (a) ~~For United States exports, the United States shall issue an acknowledgment of receipt and assume other responsibilities of the competent authority of the country of import.~~
 - (b) ~~For United States imports, the United States recovery facility or importer, or both, and the United States shall assume the obligations associated with the amber control procedures that normally apply to the exporter and country of export, respectively.~~
 - (3) ~~Amber wastes that are not considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~ wastes, but are

considered hazardous by ~~an organization for economic cooperation and development member~~the other country are subject to the amber control procedures in ~~the organization for economic cooperation and development member~~that country that considers the waste hazardous, and are not subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55. All responsibilities of the ~~United States~~ importer or exporter, ~~or both~~, shift to the foreign importer or foreign exporter, ~~or both, of the organization for economic cooperation and development member in~~ the other country that considers the waste hazardous unless the parties make other arrangements through contracts.

[Note: Some Amber list wastes ~~subject to the amber control procedures~~ are not listed or otherwise identified as hazardous under the Resource Conservation and Recovery Act, and therefore are not subject to the ~~amber control procedures~~requirements of sections 33.1-24-03-50 through 33.1-24-03-59. Regardless of the status of the waste under the Resource Conservation and Recovery Act, however, other federal environmental statutes (for example, the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to sections 33.1-24-03-50 through 33.1-24-03-59.]

c. ~~Procedures for mixtures~~Mixtures of wastes.

- (1) A green waste that is mixed with one or more other green wastes such that the resulting mixture is not ~~considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~ shall be subject to the ~~green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery~~waste is not subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

[Note: The regulated community should note that some ~~organization for economic cooperation and development member~~ countries may require, by domestic law, that mixtures of different green wastes be subject to the amber control procedures.]

- (2) A green waste that is mixed with one or more amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more amber wastes, such that the resulting waste mixture is ~~considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~ are subject to the ~~amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery~~waste is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

[Note: The regulated community should note that some ~~organization for economic cooperation and development member~~ countries may require, by domestic law, that a mixture of a green waste and more than a de minimis amount of an amber waste or a mixture of two or more amber wastes be subject to the amber control procedures.]

d. Wastes not yet assigned to an organization for economic cooperation and development waste list are eligible for transboundary movements, as follows:

- (1) If such wastes are ~~considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~wastes, such wastes are subject to the ~~amber control procedures~~requirements of sections 33.1-24-03-50 through 33.1-24-03-55.
- (2) If such wastes are not ~~considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50~~wastes, such wastes

are not subject to the ~~green control procedures~~requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

2. **General conditions applicable to transboundary movements of hazardous waste:**

- a. The hazardous waste must be destined for recovery or disposal operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the ~~importing~~country of import;
- b. The transboundary movement must be in compliance with applicable international transport agreements; and

[Note: These international agreements include the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SILASSOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).]

- c. Any transit of hazardous waste through ~~a non-organization for economic cooperation and development member country~~one or more countries must be conducted in compliance with all applicable international and national laws and regulations.

3. **Provisions relating to re-export for recovery to a third country:**

~~a. Re-export of wastes subject to the amber control procedures from the United States, as the country of import, to a third country listed in subdivision a of subsection 1 of section 33.1-24-03-25 may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in section 33.1-24-03-53 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty days to object to the proposed movement.~~

~~(1) The thirty day period begins once the competent authorities of both the initial country of export and new country of import issue acknowledgments of receipt of the notification.~~

~~(2) The transboundary movement may commence if no objection has been lodged after the thirty day period has passed or immediately after written consent is received from all relevant organization for economic cooperation and development importing and transit countries.~~

~~b. In the case of re-export of amber wastes to a country other than those listed in subdivision a of subsection 1 of section 33.1-24-03-25, notification to and consent of the competent authorities of the organization for economic cooperation and development member country of export and any organization for economic cooperation and development member countries of transit is required as specified in subdivision a, in addition to compliance with all international agreements and arrangements to which the first importing organization for economic cooperation and development member country is a party and all applicable regulatory requirements for exports from the first country of import.~~

~~4. **Duty to return or re-export wastes subject to the amber control procedures. When a transboundary movement of wastes subject to the amber control procedures cannot be completed in accordance with the terms of the contract or the consents and alternative arrangements cannot be made to recover the wastes in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of subsection 3 apply to any shipments to be**~~

~~re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:~~

~~a. Return from the United States to the country of export: The United States importer must inform the environmental protection agency at the specified address in paragraph 1 of subdivision a of subsection 2 of section 33.1-24-03-53 and the state of the need to return the shipment. The environmental protection agency will then inform the competent authorities of the countries of export and transit, citing the reasons for returning the wastes. The United States importer must complete the return within ninety days from the time the environmental protection agency informs the country of export of the need to return the waste, unless informed in writing by the environmental protection agency of another time frame agreed to by the concerned member countries. If the return shipment will cross any transit country, the return shipment may only occur after the environmental protection agency provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the United States importer.~~

~~b. Return from the country of import to the United States: The United States exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs the environmental protection agency of the need to return the waste or such other period of time as the concerned member countries agree. The United States exporter must submit an exception report to the environmental protection agency and the state in accordance with subsection 2 of section 33.1-24-03-57.~~

~~5. **Duty to return wastes subject to the amber control procedures from a country of during transit through the United States.** When a transboundary movement of hazardous wastes transiting the United States and subject to the amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover or dispose of these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate: The United States transporter shall inform the environmental protection agency at the specified mailing address in subsection 5, and the department, of the need to return the shipment. The environmental protection agency will then inform the competent authority of the country of export, citing the reasons for returning the waste. The United States transporter shall complete the return within ninety days from the time the environmental protection agency informs the country of export of the need to return the waste, unless informed in writing by the environmental protection agency of another timeframe agreed to by the concerned countries.~~

~~a. Return from the United States (as country of transit) to the country of export. The United States transporter must inform the environmental protection agency at the specified address in paragraph 1 of subdivision a of subsection 2 of section 33.1-24-03-53 and the state of the need to return the shipment. The environmental protection agency will then inform the competent authority of the country of export, citing the reasons for returning the waste. The United States transporter must complete the return within ninety days from the time the environmental protection agency informs the country of export of the need to return the waste, unless informed in writing by the environmental protection agency of another time frame agreed to by the concerned member countries.~~

~~b. Return from the country of transit to the United States (as country of export): The United States exporter must provide for the return of the hazardous waste shipment within ninety days from the time the competent authority of the country of transit informs the environmental protection agency of the need to return the waste or such other period of time as the concerned member countries agree. The United States exporter must submit~~

~~an exception report to the environmental protection agency and the state in accordance with subsection 2 of section 33.1-24-03-57.~~

~~6. **Requirements for wastes destined for and received by R12 and R13 facilities.** The transboundary movement of wastes destined for R12 and R13 operations must comply with all amber control procedures for notification and consent as set forth in section 33.1-24-03-53 and for the movement document as set forth in section 33.1-24-03-54. Additional responsibilities of R12 or R13, or both, facilities include:~~

~~a. Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1 through R11 recovery operation takes place or may take place.~~

~~b. Within three days of the receipt of the wastes by the R12 or R13, or both, recovery facility or facilities, the facilities shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facilities shall retain the original of the movement document for three years.~~

~~c. As soon as possible, but no later than thirty days after the completion of the R12 or R13, or both, recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facilities shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and to the state, by electronic mail, electronic mail without digital signature followed by mail, or fax followed by mail.~~

~~d. When an R12 or R13, or both, recovery facility delivers wastes for recovery to an R1 through R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one calendar year following delivery of the waste, a certification from the R1 through R11 facility that recovery of the wastes at that facility has been completed. The R12 or R13, or both, facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.~~

~~e. When an R12 or R13, or both, recovery facility delivers wastes for recovery to an R1 through R11 recovery facility located:~~

~~(1) In the initial country of export, amber control procedures apply including a new notification;~~

~~(2) In a third country other than the initial country of export, amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.~~

7.4. Laboratory analysis exemption. ~~The transboundary movement of an amber waste is exempt from the amber control procedures if it is in certain quantities and~~Export or import of a hazardous waste sample is exempt from the requirements of sections 33.1-24-03-50 through 33.1-24-03-55 if the sample is destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery or disposal operations. ~~The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately but in no case exceed twenty-five kilograms. Waste destined for laboratory analysis must still be appropriately packaged and labeled, does not exceed twenty-five kilograms in quantity, is appropriately packaged and labeled and complies with the conditions of subsection 4 or 5 of section 33.1-24-02-04.~~

5. **Environmental protection agency address for submittals by postal mail or hand delivery.** Submittals required in sections 33.1-24-03-50 through 33.1-24-03-55 to be made by postal mail or hand delivery should be sent to the following addresses:

a. For postal mail delivery.

Office of Enforcement and Compliance Assurance,
Office of Federal Activities,
International Compliance Assurance Division (2254A),
Environmental Protection Agency,
1200 Pennsylvania Avenue NW.,
Washington, DC 20460.

b. For hand-delivery.

Office of Enforcement and Compliance Assurance,
Office of Federal Activities,
International Compliance Assurance Division,
Environmental Protection Agency,
William Jefferson Clinton South Building, Room 6144,
12th Street and Pennsylvania Avenue NW.,
Washington, DC 20004.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-53. Notification and consent Exports of hazardous waste.

1. **Applicability.** ~~Consent must be obtained from the competent authorities of the relevant organization for economic cooperation and development countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to sections 33.1-24-03-50 through 33.1-24-03-59. Hazardous wastes subject to the amber control procedures are subject to the requirements of subsection 2; and wastes not identified on any list are subject to the requirements of subsection 3.~~

2. **Amber wastes.** ~~Exports of hazardous wastes from the United States as described in subsection 1 of section 33.1-24-03-50 that are subject to the amber control procedures are prohibited unless the notification and consent requirements of subdivision a or b of subsection 2 are met.~~

a. ~~Transactions requiring specific consent:~~

(1) **Notification.** ~~At least forty-five days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, with the words "Attention: Organization for Economic Cooperation and Development Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in subsection 4. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same hazardous waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. Even when a~~

~~general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to section 33.1-24-03-54.~~

~~(2) **Tacit consent.** If no objection has been lodged by any countries concerned (for example, exporting, importing, or transit) to a notification provided pursuant to paragraph 1 within thirty days after the date of issuance of the acknowledgment of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the thirty-day period; renotification and renewal of all consents are required for exports after that date.~~

~~(3) **Written consent.** If the competent authorities of all the relevant organization for economic cooperation and development importing and transit countries provide written consent in a period less than thirty days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant organization for economic cooperation and development importing and transit country one calendar year after that date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.~~

~~b. Transboundary movements to facilities preapproved by the competent authorities of the importing countries to accept specific wastes for recovery:~~

~~(1) Notification. The exporter must provide the environmental protection agency, and the state, a notification that contains all the information identified in subsection 4 in English, at least ten days in advance of commencing shipment to a preapproved facility. The notification must indicate that the recovery facility is preapproved, and may apply to a single specific shipment or to multiple shipments as described in paragraph 1 of subdivision a. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, with the words "Organization for Economic Cooperation and Development Export Notification -- Preapproved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph 1 of subdivision a may cover a period of up to three years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to section 33.1-24-03-54.~~

~~(2) Exports to preapproved facilities may take place after the elapse of seven working days from the issuance of an acknowledgment of receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.~~

~~3. **Wastes not covered in the organization for economic cooperation and development green and amber lists.** Wastes destined for recovery operations, that have not been assigned to the organization for economic cooperation and development green and amber lists, incorporated by reference in subsection 4 of section 33.1-24-03-59, but which are considered hazardous under United States national procedures as defined in subsection 1 of section 33.1-24-03-50, are subject to the notification and consent requirements established for the amber control procedures in accordance with subsection 2. Wastes destined for recovery operations, that have not been assigned to the organization for economic cooperation and development green and amber lists incorporated by reference in subsection 4 of section~~

~~33.1-24-03-59, and are not considered hazardous under United States national procedures as defined by subsection 1 of section 33.1-24-03-50 are subject to the green control procedures.~~

~~4. Notifications submitted under this section must include the following information:~~

- ~~a. Serial number or other accepted identifier of the notification document;~~
- ~~b. Exporter name and identification number (if applicable), address, telephone, fax numbers, and electronic mail address;~~
- ~~c. Importing recovery facility name, address, telephone, fax number, electronic mail address, and technologies employed;~~
- ~~d. Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and electronic mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;~~
- ~~e. Intended transporters or their agents, or both, address, telephone, fax, and electronic mail address;~~
- ~~f. Country of export and relevant competent authority, and point of departure;~~
- ~~g. Countries of transit and relevant competent authorities and points of entry and departure;~~
- ~~h. Country of import and relevant competent authority, and point of entry;~~
- ~~i. Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;~~
- ~~j. Dates foreseen for commencement of transboundary movements;~~
- ~~k. Means of transport envisaged;~~
- ~~l. Designation of waste types from the appropriate organization for economic cooperation and development list incorporated by reference in subsection 4 of section 33.1-24-03-59, descriptions of each waste type, estimated total quantity of each, hazardous waste code, and the United Nations number for each waste type;~~
- ~~m. Specification of the recovery operations as defined in section 33.1-24-03-51.~~
- ~~n. Certification signed by the exporter that states:~~

~~I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.~~

~~Name: _____~~

~~Signature: _____~~

~~Date: _____~~

~~Note: The United States does not currently require financial assurance for these waste shipments. However, United States exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.~~

~~5. **Certificate of Recovery.** As soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following receipt of the waste, the United States recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, electronic mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under section 33.1-24-03-55.~~General export requirements. Except as provided in subdivisions e and f, exporters that have received an acknowledgment of consent from the environmental protection agency before December 31, 2016, are subject to that approval and the requirements listed in the acknowledgment of consent that existed at the time of that approval until such time the approval period expires. All other exports of hazardous waste are prohibited unless:

a. The exporter complies with the contract requirements in subsection 6;

b. The exporter complies with the notification requirements in subsection 2;

c. The exporter receives an acknowledgment of consent from the environmental protection agency documenting consent from the countries of import and transit (and original country of export if exporting previously imported hazardous waste);

d. The exporter ensures compliance with the movement documents requirements in subsection 4;

e. The exporter ensures compliance with the manifest instructions for export shipments in subsection 3; and

f. The exporter or a United States authorized agent:

(1) For shipments initiated prior to the automated export system filing compliance date, does one of the following:

(a) Submits electronic export information for each shipment to the automated export system or its successor system, under the international trade data system platform, in accordance with 15 CFR 30.4(b), and includes the following items in the electronic export information, along with the other information required under 15 CFR 30.6:

[1] Environmental protection agency license code;

[2] Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

[3] Environmental protection agency consent number for each hazardous waste;

[4] Country of ultimate destination code per 15 CFR 30.6(a)(5);

[5] Date of export per 15 CFR 30.6(a)(2);

[6] Resource Conservation and Recovery Act hazardous waste manifest tracking number, if required;

[7] Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported

commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

[8] Environmental protection agency net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(b) Complies with a paper-based process by:

[1] Attaching paper documentation of consent (such as, a copy of the environmental protection agency acknowledgment of consent, international movement document) to the manifest, or shipping papers if a manifest is not required, which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter shall provide the transporter with the paper documentation of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter shall attach the paper documentation of consent to the shipping paper.

[2] Providing the transporter with an additional copy of the manifest, and instructing the transporter via mail, electronic mail or fax to deliver that copy to the United States customs official at the point the hazardous waste leaves the United States in accordance with paragraph 2 of subdivision d of subsection 7 of section 33.1-24-04-04.

(2) For shipments initiated on or after the automated export system filing compliance date, submits electronic export information for each shipment to the automated export system or its successor system, under the international trade data system platform, in accordance with 15 CFR 30.4(b), and includes the following items in the electronic export information, along with the other information required under 15 CFR 30.6:

(a) Environmental protection agency license code;

(b) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

(c) Environmental protection agency consent number for each hazardous waste;

(d) Country of ultimate destination code per 15 CFR 30.6(a)(5);

(e) Date of export per 15 CFR 30.6(a)(2);

(f) Resource Conservation and Recovery Act hazardous waste manifest tracking number, if required;

(g) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(h) Environmental protection agency net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

2. Notifications.

- a. General notifications. At least sixty days before the first shipment of hazardous waste is expected to leave the United States, the exporter shall provide notification in English to the environmental protection agency and the department of the proposed transboundary movement. Notifications must be submitted electronically using the environmental protection agency's waste import export tracking system, or its successor system and by mail to the department. The notification may cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or disposal facility, and must include all of the following information:
- (1) Exporter name and identification number, address, telephone, fax numbers, and electronic mail address;
 - (2) Foreign receiving facility name, address, telephone, fax numbers, electronic mail address, technologies employed, and the applicable recovery or disposal operations as defined in section 33.1-24-03-51;
 - (3) Foreign importer name, if not the owner or operator of the foreign receiving facility, address, telephone, fax numbers, and electronic mail address;
 - (4) Intended transporters and their agents, or agents; address, telephone, fax, and electronic mail address;
 - (5) "United States" as the country of export name, "USA01" as the relevant competent authority code, and the intended United States port or ports of exit;
 - (6) The ISO standard 3166 country name two-digit code, Organization for Economic Cooperation and Development/Basel competent authority code, and the ports of entry and exit for each country of transit;
 - (7) The ISO standard 3166 country name two-digit code, Organization for Economic Cooperation and Development/Basel competent authority code, and port of entry for the country of import;
 - (8) Statement of whether the notification covers a single shipment or multiple shipments;
 - (9) Start and end dates requested for transboundary movements;
 - (10) Means of transport planned to be used;
 - (11) Descriptions of each hazardous waste, including whether each hazardous waste is regulated universal waste under sections 33.1-24-05-700 through 33.1-24-05-799, spent lead-acid batteries being exported for recovery of lead under sections 33.1-24-05-235 through 33.1-24-05-234, or industrial ethyl alcohol being exported for reclamation under paragraph 1 of subdivision c of subsection 1 of section 33.1-24-02-06, estimated total quantity of each waste in either metric tons or cubic meters, the applicable Resource Conservation and Recovery Act waste codes for each hazardous waste, the applicable Organization for Economic Cooperation and Development waste code from the lists incorporated by reference in section 33.1-24-01-05, and the United Nations/United States department of transportation identification number for each waste;
 - (12) Specification of the recovery or disposal operations as defined in section 33.1-24-03-51.

(13) Certification/declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

- b. Exports to preconsented recovery facilities in Organization for Economic Cooperation and Development member countries. If the recovery facility is located in an Organization for Economic Cooperation and Development member country and has been pre-consented by the competent authority of the Organization for Economic Cooperation and Development member country to recover the waste sent by exporters located in other Organization for Economic Cooperation and Development member countries, the notification may cover up to three years of shipments. Notifications proposing export to a pre-consented facility in an Organization for Economic Cooperation and Development member country must include all information listed in paragraphs 1 through 13 of subdivision a and additionally state that the facility is pre-consented. Exporters shall submit the notification to environmental protection agency using the allowable methods listed in subdivision a at least ten days before the first shipment is expected to leave the United States.
- c. Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in paragraph 2 of subdivision a will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12, R13, or RC16, or interim disposal operations D13 to D14, or DC17, the notification submitted according to subdivision a also must include the final foreign recovery or disposal facility name, address, telephone, fax numbers, electronic mail address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC14 to RC15, D1 through D12, and DC15 to DC16 will be employed at the final foreign recovery or disposal facility. The recovery and disposal operations in this subdivision are defined in section 33.1-24-03-51.
- d. Renotifications. When the exporter wishes to change any of the information specified on the original notification, including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters, the exporter shall submit a renotification of the changes to the environmental protection agency and the department using the allowable methods in subdivision a. Any shipment using the requested changes cannot take place until the countries of import and transit consent to the changes and the exporter receives an environmental protection agency acknowledgment of consent letter documenting the countries' consents to the changes.
- e. For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, the environmental protection agency will coordinate with the department of State to provide the complete notification to country of import and any countries of transit. In all other cases, the environmental protection agency will provide the notification directly to the country of import and any countries of transit. A notification

is complete when the environmental protection agency receives a notification that the environmental protection agency determines satisfies the requirements of paragraphs 1 through 13 of subdivision a.

f. When the countries of import and transit consent to the proposed transboundary movements of the hazardous wastes, the environmental protection agency will forward an environmental protection agency acknowledgment of consent letter to the exporter documenting the countries' consents. When any of the countries of import and transit objects to the proposed transboundary movements of the hazardous waste or withdraws a prior consent, the environmental protection agency will notify the exporter.

g. Export of hazardous wastes for recycling or disposal operations that were originally imported into the United States for recycling or disposal operations in a third country is prohibited unless an exporter in the United States complies with the export requirements in this section, including providing notification to the environmental protection agency and the department in accordance with subdivision a. In addition to listing all required information in paragraphs 1 through 13 of subdivision a, the exporter shall provide the original consent number issued for the initial import of the wastes in the notification, and receive an acknowledgment of consent from the environmental protection agency documenting the consent of the competent authorities in new country of import, the original country of export, and any transit countries prior to re-export.

h. Upon request by the environmental protection agency, the exporter shall furnish to the environmental protection agency any additional information that the country of import requests in order to respond to a notification.

3. Resource Conservation and Recovery Act manifest instructions for export shipments. The exporter shall comply with the manifest requirements of sections 33.1-24-03-04 through 33.1-24-03-07 except that:

a. In lieu of the name, site address, and identification number of the designated permitted facility, the exporter shall enter the name and site address of the foreign receiving facility:

b. In the international shipments block, the exporter shall check the export box and enter the United States port of exit (city and state) from the United States.

c. The exporter shall list the consent number from the acknowledgment of consent for each hazardous waste listed on the manifest, matched to the relevant list number for the hazardous waste from block 9b. If additional space is needed, the exporter should use a continuation sheet (environmental protection agency form 8700-22A).

d. The exporter may obtain the manifest from any source that is registered with the United States environmental protection agency as a supplier of manifests (for example, states, waste handlers, or commercial forms printers).

4. Movement document requirements for export shipments.

a. All exporters shall ensure that a movement document meeting the conditions of subdivision b accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility, including cases in which the hazardous waste is stored and sorted, or sorted, by the foreign importer prior to shipment to the foreign receiving facility, except as provided in paragraphs 1 and 2.

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the exporter shall forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if exported by water.

(2) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the exporter shall forward the movement document to the next nonrail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if exported by rail.

b. The movement document must include the following:

(1) The corresponding consent numbers and hazardous waste numbers for the listed hazardous waste from the relevant environmental protection agency acknowledgment of consents;

(2) The shipment number and the total number of shipments from the environmental protection agency acknowledgment of consent;

(3) Exporter name and identification number, address, telephone, fax numbers, and electronic mail address;

(4) Foreign receiving facility name, address, telephone, fax numbers, electronic mail address, technologies employed, and the applicable recovery or disposal operations as defined in section 33.1-24-03-51;

(5) Foreign importer name, if not the owner or operator of the foreign receiving facility, address, telephone, fax numbers, and electronic mail address;

(6) Descriptions of each hazardous waste, quantity of each hazardous waste in the shipment, applicable Resource Conservation and Recovery Act hazardous waste codes for each hazardous waste, applicable Organization for Economic Cooperation and Development waste code for each hazardous waste from the lists incorporated by reference in section 33.1-24-01-05, and the United Nations/United States department of transportation identification number for each hazardous waste;

(7) Date movement commenced;

(8) Name (if not the exporter), address, telephone, fax numbers, and electronic mail of company originating the shipment;

(9) Company name, environmental protection agency identification number, address, telephone, fax, and electronic mail address of all transporters;

(10) Identification (license, registered name, or registration number) of means of transport, including types of packaging;

(11) Any special precautions to be taken by transporters;

(12) Certification or declaration, or both, signed and dated by the exporter that the information in the movement document is complete and correct;

(13) Appropriate signatures for each custody transfer (for example, transporter, importer, and owner or operator of the foreign receiving facility);

(14) Each United States person that has physical custody of the hazardous waste from the time the movement commences until it arrives at the foreign receiving facility must sign the movement document (for example, transporter, foreign importer, and owner or operator of the foreign receiving facility); and

(15) As part of the contract requirements of subsection 6, the exporter shall require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to the

competent authorities of the countries of import and transit, the department, and for shipments occurring on or after the electronic import-export reporting compliance date, the exporter additionally shall require that the foreign receiving facility send a copy to the environmental protection agency at the same time using the allowable methods listed in subdivision a of subsection 2.

5. Duty to return or re-export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consents and alternative arrangements cannot be made to recover or dispose of the waste in an environmentally sound manner in the country of import, the exporter shall ensure that the hazardous waste is returned to the United States or re-exported to a third country. If the waste must be returned, the exporter shall provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs the environmental protection agency and the department of the need to return the waste or such other period of time as the concerned countries agree. In all cases, the exporter shall submit an exception report to the environmental protection agency and the department in accordance with subsection 8.

6. Export contract requirements.

a. Exports of hazardous waste are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter, foreign importer (if different from the foreign receiving facility), and the owner or operator of the foreign receiving facility, and shall specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

b. Contracts or equivalent arrangements must specify the name and environmental protection agency identification number, where available, of:

(1) The company from where each export shipment of hazardous waste is initiated;

(2) Each person who will have physical custody of the hazardous wastes;

(3) Each person who will have legal control of the hazardous wastes; and

(4) The foreign receiving facility.

c. Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The transporter or foreign receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the exporter, the environmental protection agency, the department, and either the competent authority of the country of transit or the competent authority of the country of import of the need to make alternate management arrangements; and

(2) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of hazardous wastes and, as the case may be, shall provide the notification for re-export to the competent authority in the country of import and include the equivalent of the information required in subdivision a of subsection 2, the original consent number issued for the

initial export of the hazardous wastes in the notification, and obtain consent from the environmental protection agency and the competent authorities in the new country of import and any transit countries prior to re-export.

- d. Contracts must specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to the competent authorities of the countries of import and transit, and the department. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to the environmental protection agency at the same time using the allowable methods listed in subdivision a of subsection 2 on or after that date.
- e. Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter, to the competent authority of the country of import, and the department. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to the environmental protection agency at the same time using the allowable methods listed in subdivision a of subsection 2 on or after that date.
- f. Contracts must specify that the foreign importer or the foreign receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC17, as appropriate, will:
- (1) Provide the notification required in paragraph 2 of subdivision c prior to any re-export of the hazardous wastes to a final foreign recovery or disposal facility in a third country; and
 - (2) Promptly send copies of the confirmation of recovery or disposal which it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, DC15 or DC16 to the competent authority of the country of import, and the department. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign facility send copies to the environmental protection agency at the same time using the allowable method listed in subdivision a of subsection 2 on or after that date.
- g. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of the country of import and any countries of transit, in accordance with applicable national or international law requirements.

Note: Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some Organization for Economic Cooperation and Development Member countries and other foreign countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, persons or facilities located in those Organization for Economic Cooperation and Development Member countries or other foreign countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

h. Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

i. Upon request by the environmental protection agency, United States exporters, importers, or recovery facilities shall submit to the environmental protection agency copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity).

7. Annual reports. The exporter shall file an annual report with the environmental protection agency and the department no later than March first of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. Prior to one year after the automated export system filing compliance date, the exporter shall mail or hand-deliver annual reports to the environmental protection agency using one of the addresses specified in subsection 5 of section 33.1-24-03-52, or submit to the environmental protection agency using the allowable methods specified in subdivision a of subsection 2 if the exporter has electronically filed the environmental protection agency information in the automated export system, or its successor system, as required by subparagraph a of paragraph 1 of subdivision f of subsection 1 for all shipments made the previous calendar year. Subsequently, the exporter shall submit annual reports to the environmental protection agency using the allowable methods specified in subdivision a of subsection 2. The annual report must include the following:

a. The identification number, name, and mailing and site address of the exporter filing the report;

b. The calendar year covered by the report;

c. The name and site address of each foreign receiving facility;

d. By foreign receiving facility, for each hazardous waste exported:

(1) A description of the hazardous waste;

(2) The applicable hazardous waste codes (from sections 33.1-24-02-10 through 33.1-24-02-19) for each waste;

(3) The applicable waste code from the appropriate Organization for Economic Cooperation and Development waste list incorporated by reference in section 33.1-24-01-05;

(4) The applicable department of transportation identification number;

(5) The name and United States environmental protection agency identification number (where applicable) for each transporter used over the calendar year covered by the report; and

(6) The consent numbers under which the hazardous waste was shipped, and for each consent number, the total amount of the hazardous waste and the number of shipments exported during the calendar year covered by the report;

e. In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than one hundred kilograms but less than one thousand kilograms in a calendar month, and except for hazardous waste for which information was already provided pursuant to section 33.1-24-03-14:

(1) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(2) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

f. A certification signed by the exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

8. Exception reports.

a. The exporter shall file an exception report in lieu of the requirements of section 33.1-24-03-15, if applicable, with the environmental protection agency and the department if any of the following occurs:

(1) The exporter has not received a copy of the hazardous waste manifest, if applicable, signed by the transporter identifying the point of departure of the hazardous waste from the United States, within forty-five days from the date it was accepted by the initial transporter, in which case the exporter shall file the exception report within the next thirty days;

(2) The exporter has not received a written confirmation of receipt from the foreign receiving facility in accordance with subsection 4 within ninety days from the date the waste was accepted by the initial transporter in which case the exporter shall file the exception report within the next thirty days; or

(3) The foreign receiving facility notifies the exporter, or the country of import notifies the environmental protection agency, of the need to return the shipment to the United States or arrange alternate management, in which case the exporter shall file the exception report within thirty days of notification, or one day prior to the date the return shipment commences, whichever is sooner.

b. Prior to the electronic import-export reporting compliance date, exception reports must be mailed or hand delivered to the environmental protection agency using the addresses listed in subsection 5 of section 33.1-24-03-52. Subsequently, exception reports must be submitted to the environmental protection agency using the allowable methods listed in subdivision a of subsection 2.

9. Recordkeeping.

a. The exporter shall keep the following records and provide them to the environmental protection agency or the department upon request:

(1) A copy of each notification of intent to export and each environmental protection agency acknowledgment of consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) A copy of each annual report for a period of at least three years from the due date of the report;

(3) A copy of any exception reports and a copy of each confirmation of receipt (for example, movement document) sent by the foreign receiving facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) A copy of each confirmation of recovery or disposal sent by the foreign receiving facility to the exporter for at least three years from the date that the foreign receiving facility completed interim or final processing of the hazardous waste shipment.

(5) A copy of each contract or equivalent arrangement established per section 33.1-24-03-55 for at least three years from the expiration date of the contract or equivalent arrangement.

b. Exporters may satisfy these recordkeeping requirements by retaining electronically submitted documents in the exporter's account on the environmental protection agency's waste import export tracking system, or its successor system, provided that copies are readily available for viewing and production if requested by any environmental protection agency or department inspector. No exporter may be held liable for the inability to produce such documents for inspection under this section if the exporter can demonstrate that the inability to produce the document is due exclusively to technical difficulty with the environmental protection agency's waste import export tracking system, or its successor system for which the exporter bears no responsibility.

c. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department or the administrator.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-55. ~~Contracts~~Imports of hazardous waste.

~~1. Transboundary movements of hazardous wastes subject to the amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator, or both, of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.~~

~~2. Contracts or equivalent arrangements must specify the name and identification number, where available, of subdivisions a through d:~~

~~a. The generator of each type of waste;~~

~~b. Each person who will have physical custody of the wastes;~~

~~c. Each person who will have legal control of the wastes; and~~

~~d. The recovery facility.~~

~~3. Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:~~

- ~~a. The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and~~
- ~~b. The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.~~

~~4. Contracts must specify that the importer will provide the notification required in subsection 3 of section 33.1-24-03-52 prior to the re-export of controlled wastes to a third country.~~

~~5. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.~~

~~Note: Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some organization for economic cooperation and development member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.~~

~~6. Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of sections 33.1-24-03-50 through 33.1-24-03-59.~~

~~7. Upon request by the environmental protection agency, United States exporters, importers, or recovery facilities must submit to the environmental protection agency copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by the environmental protection agency only as provided in 40 CFR 260.2.~~

~~Note: Although the United States does not require routine submission of contracts at this time, the organization for economic cooperation and development decision allows member countries to impose such requirements. When other organization for economic cooperation and development member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, the environmental protection agency will request the required information; absent submission of such information, some organization for economic cooperation and development member countries may deny consent for the proposed movement.~~

1. General import requirements.

a. With the exception of subdivision e, importers of shipments covered under a consent from environmental protection agency to the country of export issued before December 31, 2016, are subject to that approval and the requirements that existed at the time of that approval until such time the approval period expires. Otherwise, any other person that imports hazardous waste from a foreign country into the United States shall comply with the requirements of sections 33.1-24-03-50 through 33.1-24-03-59.

- b. In cases in which the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer shall submit a notification to environmental protection agency in accordance with subsection 2.
- c. The importer shall comply with the contract requirements in subsection 6.
- d. The importer shall ensure compliance with the movement documents requirements in subsection 4; and
- e. The importer shall ensure compliance with the manifest instructions for import shipments in subsection 3.

2. **Notifications.** In cases in which the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from environmental protection agency and the competent authorities for the countries of transit, but environmental protection agency does regulate the waste as hazardous waste.

a. The importer shall provide notification in English to environmental protection agency of the proposed transboundary movement of hazardous waste at least sixty days before the first shipment is expected to depart the country of export. Notifications submitted prior to the electronic import-export reporting compliance date must be mailed or hand delivered to environmental protection agency at the addresses specified in subsection 5 of section 33.1-24-03-52. Notifications submitted on or after the electronic import-export reporting compliance date must be submitted electronically using environmental protection agency's waste import export tracking system, or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent from the same foreign exporter, and must include all of the following information:

- (1) Foreign exporter name, address, telephone, fax numbers, and electronic mail address;
- (2) Receiving facility name, environmental protection agency identification number, address, telephone, fax numbers, electronic mail address, technologies employed, and the applicable recovery or disposal operations as defined in section 33.1-24-03-51;
- (3) Importer name (if not the owner or operator of the receiving facility), environmental protection agency identification number, address, telephone, fax numbers, and electronic mail address;
- (4) Intended transporter or their agent, or both; address, telephone, fax, and electronic mail address;
- (5) "United States" as the country of import, "USA01" as the relevant competent authority code, and the intended United States port of entry;
- (6) The ISO standard 3166 country name two-digit code, Organization for Economic Cooperation and Development/Basel competent authority code, and the ports of entry and exit for each country of transit;
- (7) The ISO standard 3166 country name two-digit code, Organization for Economic Cooperation and Development/Basel competent authority code, and port of exit for the country of export;
- (8) Statement of whether the notification covers a single shipment or multiple shipments;

(9) Start and end dates requested for transboundary movements;

(10) Means of transport planned to be used;

(11) Descriptions of each hazardous waste, including whether each hazardous waste is regulated universal waste under sections 33.1-24-05-700 through 33.1-24-05-799, spent lead-acid batteries being exported for recovery of lead under sections 33.1-24-05-235 through 33.1-24-05-249, or industrial ethyl alcohol being exported for reclamation under paragraph 1 of subdivision c of subsection 1 of section 33.1-24-02-06, estimated total quantity of each hazardous waste, the applicable Resource Conservation and Recovery Act hazardous waste code for each hazardous waste, the applicable Organization for Economic Cooperation and Development waste code from the lists incorporated by reference in section 33.1-24-01-05, and the United Nations/United States department of transportation identification number for each hazardous waste;

(12) Specification of the recovery or disposal operation as defined in section 33.1-24-03-51; and

(13) Certification/declaration signed by the importer that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

[NOTE] The United States does not currently require financial assurance for these waste shipments.

b. Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph 2 of subdivision a of subsection 2 of section 33.1-24-03-55 will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, the notification submitted according to subdivision a of subsection 2 of section 33.1-24-03-55 must also include the final recovery or disposal facility name, address, telephone, fax numbers, electronic mail address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, will be employed at the final recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in 33.1-24-03-51.

c. **Renotifications.** When the foreign exporter wishes to change any conditions specified in the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the importer shall submit a renotification of the changes to environmental protection agency using the allowable methods in subdivision a of subsection 2 of section 33.1-24-03-55. Any shipment using the requested changes cannot take place until environmental protection agency and the countries of transit consent to the changes and the importer receives an environmental protection agency acknowledgment of consent letter documenting the consents to the changes.

- d. A notification is complete when environmental protection agency determines the notification satisfies the requirements of paragraphs 1 through 13 of subdivision b.
- e. When environmental protection agency and the countries of transit consent to the proposed transboundary movement of the hazardous waste, the environmental protection agency will forward an environmental protection agency acknowledgment of consent letter to the importer documenting the countries' consents and environmental protection agency's consent. When any of the countries of transit or environmental protection agency objects to the proposed transboundary movement of the hazardous waste or withdraws a prior consent, environmental protection agency will notify the importer.
- f. Export of hazardous wastes originally imported into the United States. Export of hazardous wastes that were originally imported into the United States for recycling or disposal operations is prohibited unless an exporter in the United States complies with the export requirements in section 33.1-24-03-53.

3. Resource Conservation and Recovery Act manifest instructions for import shipments.

- a. When importing hazardous waste, the importer shall meet all the requirements of section 33.1-24-03-04 for the manifest except that:
 - (1) In place of the generator's name, address, and environmental protection agency identification number, the name and address of the foreign generator and the importer's name, address, and environmental protection agency identification number must be used.
 - (2) In place of the generator's signature on the certification statement, the importer or his agent shall sign and date the certification and obtain the signature of the initial transporter.
- b. The importer may obtain the manifest form from any source that is registered with the environmental protection agency as a supplier of manifests (e.g., states, waste handlers, or commercial forms printers).
- c. In the international shipments block the importer shall check the import box and enter the point of entry (city and state) into the United States.
- d. The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to United States environmental protection agency in accordance with section 33.1-24-05-38.
- e. In lieu of the requirements of 33.1-24-03-04, when a shipment cannot be delivered for any reason to the receiving facility, the importer shall instruct the transporter in writing via fax, electronic mail, or mail to:
 - (1) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and
 - (2) Revise the manifest in accordance with the importer's instructions.

4. Movement document requirements for import shipments.

- a. The importer shall ensure that a movement document meeting the conditions of paragraph b accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored or sorted, or both, by the importer

prior to shipment to the receiving facility, except as provided in subparagraphs 1 and 2 of this section.

- (1) For shipments of hazardous waste within the United States by water (bulk shipments only), the importer shall forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if imported by water.
- (2) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the importer shall forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if imported by rail.

b. The movement document must include the following paragraphs of this section:

- (1) The corresponding acknowledgment of consent number and waste number for the listed waste;
- (2) The shipment number and the total number of shipments under the acknowledgment of consent number;
- (3) Foreign exporter name, address, telephone, fax numbers, and electronic mail address;
- (4) Receiving facility name, environmental protection agency identification number, address, telephone, fax numbers, electronic mail address, technologies employed, and the applicable recovery or disposal operations as defined in section 33.1-24-03-51;
- (5) Importer name (if not the owner or operator of the receiving facility), environmental protection agency identification number, address, telephone, fax numbers, and electronic mail address;
- (6) Description of each hazardous waste, quantity of each hazardous waste in the shipment, applicable Resource Conservation and Recovery Act hazardous waste code for each hazardous waste, the applicable Organization for Economic Cooperation and Development waste code for each hazardous waste from the lists incorporated by reference in section 33.1-24-01-05, and the United Nations/United States department of transportation identification number for each hazardous waste;
- (7) Date movement commenced;
- (8) Name (if not the foreign exporter), address, telephone, fax numbers, and electronic mail of the foreign company originating the shipment;
- (9) Company name, environmental protection agency identification number, address, telephone, fax, and electronic mail address of all transporters;
- (10) Identification (license, registered name, or registration number) of means of transport, including types of packaging;
- (11) Any special precautions to be taken by transporter;
- (12) Certification/declaration signed and dated by the foreign exporter that the information in the movement document is complete and correct;
- (13) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the receiving facility);

(14) Each person that has physical custody of the waste from the time the movement commences until it arrives at the receiving facility must sign the movement document (e.g., transporter, importer, and owner or operator of the receiving facility); and

(15) The receiving facility shall send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter, to the competent authorities of the countries of export and transit, and for shipments received on or after the electronic import-export reporting compliance date, to environmental protection agency electronically using environmental protection agency's waste import export tracking system, or its successor system.

5. Duty to return or export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent, the provisions of subdivision d of subsection 6 of section 33.1-24-03-55 apply. If alternative arrangements cannot be made to recover the hazardous waste in an environmentally sound manner in the United States, the hazardous waste must be returned to the country of export or exported to a third country. The provisions of subdivision f of subsection 2 of section 33.1-24-03-55 apply to any hazardous waste shipments to be exported to a third country. If the return shipment will cross any transit country, the return shipment only may occur after environmental protection agency provides notification to and obtains consent from the competent authority of the country of transit and provides a copy of that consent to the importer.

6. Import contract requirements.

a. Imports of hazardous waste must occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

b. Contracts or equivalent arrangements must specify the name and environmental protection agency identification number, where available of paragraphs 1 through 4:

(1) The foreign company from where each import shipment of hazardous waste is initiated;

(2) Each person who will have physical custody of the hazardous wastes;

(3) Each person who will have legal control of the hazardous wastes; and

(4) The receiving facility.

c. Contracts or equivalent arrangements must specify the use of a movement document in accordance with subsection 4 of section 33.1-24-03-55.

d. Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export submitted by either the foreign exporter or the importer. In such cases, contracts must specify that:

(1) The transporter or receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the foreign exporter and importer, and the competent authority where the shipment is located of the need to arrange alternate management or return; and

(2) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of the hazardous wastes and, as the case may be, shall provide the notification for re-export required in subdivision g of subsection 2 of section 33.1-24-03-53.

e. Contracts must specify that the importer or the receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC15 through DC17, as appropriate, will provide the notification required in 33.1-24-03-53 prior to the re-export of hazardous wastes. The recovery and disposal operations in this paragraph are defined in 33.1-24-03-51.

f. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

[NOTE: Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some Organization for Economic Cooperation and Development member countries or other foreign countries do. It is the responsibility of the importer to ascertain and comply with such requirements; in some cases, persons or facilities located in those countries may refuse to enter into the necessary contracts absent specific reference or certifications to financial guarantees.]

g. Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this section.

h. Upon request by environmental protection agency, importers or disposal or recovery facilities shall submit to environmental protection agency copies of contracts, chain of contracts, or equivalent arrangements when the movement occurs between parties controlled by the same corporate or legal entity.

7. Confirmation of recovery or disposal. The receiving facility must do the following:

a. Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to environmental protection agency electronically using environmental protection agency's waste import export tracking system, or its successor system.

b. If the receiving facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC14 to RC15, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export, and for confirmations received on or after the electronic

import-export reporting compliance date, to the environmental protection agency electronically using environmental protection agency's waste import export tracking system, or its successor system. The recovery and disposal operations in this paragraph are defined in 33.1-24-03-51.

8. Recordkeeping.

a. The importer shall keep the following records and provide them to environmental protection agency or authorized state personnel upon request:

(1) A copy of each notification that the importer sends to environmental protection agency under subdivision a of subsection 2 of section 33.1-24-03-55 and each environmental protection agency AOC it receives in response for a period of at least three years from the date the hazardous waste was accepted by the initial foreign transporter; and

(2) A copy of each contract or equivalent arrangement established per subsection 6 of section 33.1-24-03-55 for at least three years from the expiration date of the contract or equivalent arrangement.

b. The receiving facility shall keep the following records:

(1) A copy of each confirmation of receipt (i.e., movement document) that the receiving facility sends to the foreign exporter for at least three years from the date it received the hazardous waste;

(2) A copy of each confirmation of recovery or disposal that the receiving facility sends to the foreign exporter for at least three years from the date that it completed processing the waste shipment;

(3) For the receiving facility that performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17 (recovery and disposal operations defined in 33.1-24-03-51), a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three years from the date that the final recovery or disposal facility completed processing the waste shipment; and

(4) A copy of each contract or equivalent arrangement established per subsection 6 of section 33.1-24-03-55 for at least three years from the expiration date of the contract or equivalent arrangement.

c. Importers and receiving facilities may satisfy these recordkeeping requirements by retaining electronically submitted documents in the importer's or receiving facility's account on environmental protection agency's waste import export tracking system, or its successor system, provided that copies are readily available for viewing and production if requested by any environmental protection agency or authorized state inspector. No importer or receiving facility may be held liable for the inability to produce such documents for inspection under this section if the importer or receiving facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with environmental protection agency's waste import export tracking system, or its successor system for which the importer or receiving facility bears no responsibility.

d. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrator.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-56. Provisions relating to recognized traders.

Repealed effective July 1, 2020.

- ~~1. A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable federal laws and state rules.~~
- ~~2. A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of sections 33.1-24-03-50 through 33.1-24-03-59 associated with being an exporter or importer.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-57. Reporting and recordkeeping.

Repealed effective July 1, 2020.

- ~~1. **Annual reports.** For all waste movements subject to sections 33.1-24-03-50 through 33.1-24-03-59, persons (for example, exporters and recognized traders) who meet the definition of primary exporter in section 33.1-24-03-18 or who initiate the movement documentation under section 33.1-24-03-54 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under section 33.1-24-03-54 is required to file an annual report for waste exports that are not covered under sections 33.1-24-03-50 through 33.1-24-03-59, the primary exporter or the person who initiates the movement document under section 33.1-24-03-54 may include all export information in one report provided the following information on exports of waste destined for recovery within the designated organization for economic cooperation and development member countries is contained in a separate section.) Such reports shall include all of the following:~~
 - ~~a. The identification number, name, and mailing and site address of the exporter filing the report;~~
 - ~~b. The calendar year covered by the report;~~
 - ~~c. The name and site address of each final recovery facility;~~
 - ~~d. By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the hazardous waste number (from sections 33.1-24-02-10 through 33.1-24-02-19), designation of waste types and applicable waste codes from the appropriate organization for economic cooperation and development waste list incorporated by reference in subsection 4 of section 33.1-24-03-59, department of transportation hazard class, the name and identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to sections 33.1-24-03-50 through 33.1-24-03-59, and number of shipments pursuant to each notification;~~

~~e. In even-numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than one hundred kilograms but less than one thousand kilograms in a calendar month, and except for hazardous waste for which information was already provided pursuant to section 33.1-24-03-14.~~

~~(1) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and~~

~~(2) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and~~

~~f. A certification signed by the person acting as primary exporter or initiator of the movement document under section 33.1-24-03-54 that states:~~

~~I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.~~

~~2. **Exception reports.** Any person who meets the definition of primary exporter in section 33.1-24-03-18 or who initiates the movement document under section 33.1-24-03-54 must file an exception report in lieu of the requirements of section 33.1-24-03-15 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and the state, if any of the following occurs:~~

~~a. The primary exporter or the person who initiates the movement document has not received a copy of the hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five days from the date it was accepted by the initial transporter;~~

~~b. Within ninety days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;~~

~~c. The waste is returned to the United States.~~

~~3. **Recordkeeping.**~~

~~a. Persons who meet the definition of primary exporter in section 33.1-24-03-18 or who initiate the movement document under section 33.1-24-03-54 shall keep the following records:~~

~~(1) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;~~

~~(2) A copy of each annual report for a period of at least three years from the due date of the report;~~

~~(3) A copy of any exception reports and a copy of each confirmation of delivery (for example, movement document) sent by the recovery facility to the exporter for at~~

least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

~~(4) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that the recovery facility completed processing the waste shipment.~~

~~b. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrator or the department.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-59. Organization for economic cooperation and development waste lists.

Repealed effective July 1, 2020.

~~1. For the purposes of sections 33.1-24-03-50 through 33.1-24-03-59, a waste is considered hazardous under United States national procedures, and subject to sections 33.1-24-03-50 through 33.1-24-03-59, if the waste:~~

~~a. Meets the federal definition of hazardous waste in 40 CFR 261.3; and~~

~~b. Is subject to either the manifesting requirements at sections 33.1-24-03-04 through 33.1-24-03-07, the universal waste management standards of sections 33.1-24-05-700 through 33.1-24-05-799, or the export requirements in the spent lead acid battery management standards of sections 33.1-24-05-235 through 33.1-24-05-249.~~

~~2. If a waste is hazardous under subsection 1, it is subject to the amber control procedures, regardless of whether it appears in appendix 4 of the organization for economic cooperation and development decision, as defined in section 33.1-24-03-51.~~

~~3. The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in section 33.1-24-03-52.~~

~~4. The organization for economic cooperation and development waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "Organization for Economic Cooperation and Development waste lists") of the 2009 "guidance manual for the implementation of council decision C(2001) 107/FINAL, as amended, on the control of transboundary movements of wastes destined for recovery operations", are incorporated by reference. This incorporation by reference was approved by the director of the federal register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the federal register. The materials are available for inspection at the United States Environmental Protection Agency, Docket Center Public Reading Room, Environmental Protection Agency West, Room 3334, 1301 Constitution Avenue NW, Washington, D.C. 20004, (Docket #EPA-HQ-RCRA-2005-0018) or at the national archives and records administration, and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at the national archives and records administration, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the environmental protection agency docket center public reading room, call 202-566-1744. To contact the organization for economic cooperation and development, call +33(0) 1 45 24 81 67.~~

History: Effective January 1, 2019.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-61. Definitions.

In addition to the definitions set forth in section 33.1-24-01-04, the following definitions apply to sections 33.1-24-03-60 through 33.1-24-03-77:

1. ~~"Central accumulation area" means an onsite hazardous waste accumulation area subject to either subsections 1 and 2 of section 33.1-24-03-12 (large quantity generators), or subsections 4 through 6 of section 33.1-24-03-12 (small quantity generators). A central accumulation area at an eligible academic entity that chooses to be subject to sections 33.1-24-03-60 through 33.1-24-03-77 must also comply with section 33.1-24-03-72 when accumulating unwanted material, or hazardous waste, or both.~~ "Central accumulation area" means any onsite hazardous waste accumulation area with hazardous waste accumulating in units subject to 33.1-24-03-27 (for small quantity generators) or 33.1-24-03-28 (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to operate under sections 33.1-24-03-60 through 33.1-24-03-77 is also subject to section 33.1-24-03-72 when accumulating unwanted material or hazardous waste, both.
2. "College or university" means a private or public, postsecondary, degree-granting, academic institution, that is accredited by an accrediting agency listed annually by the United States department of education.
3. "Eligible academic entity" means a college or university, or a nonprofit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.
4. "Formal written affiliation agreement" for a nonprofit research institute means a written document that establishes a relationship between institutions for the purposes of research or education, or both, and is signed by authorized representatives, as defined by section 33.1-24-01-04, from each institution. A relationship on a project-by-project, or grant-by-grant basis, is not considered a formal written affiliation agreement. A formal written affiliation agreement for a teaching hospital means a master affiliation agreement and program letter of agreement, as defined by the accreditation council for graduate medical education, with an accredited medical program or medical school.
5. "Laboratory" means an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a nonproduction basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching, or research laboratories (or diagnostic laboratories at teaching hospitals), are also considered laboratories.
6. "Laboratory clean-out" means an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (for example, at the end of a semester or academic year), or as a result of a renovation, relocation, or change in laboratory supervisor, or occupant, or both. A regularly scheduled removal of unwanted material as required by section 33.1-24-03-69 does not qualify as a laboratory clean-out.

7. "Laboratory worker" means a person who handles chemicals, or unwanted material, or both, in a laboratory and may include faculty, staff, postdoctoral fellows, interns, researchers, technicians, supervisors or managers, and principal investigators. A person does not need to be paid or otherwise compensated for work in the laboratory to be considered a laboratory worker. Undergraduate and graduate students in a supervised classroom setting are not laboratory workers.
8. "Nonprofit research institute" means an organization that conducts research as its primary function and files as a nonprofit organization under the tax code of 26 United States Code 501(c)(3).
9. "Reactive acutely hazardous unwanted material" means an unwanted material that is one of the acutely hazardous commercial chemical products listed in subsection 5 of section 33.1-24-02-18 for reactivity.
10. "Teaching hospital" means a hospital that trains students to become physicians, nurses, or other health or laboratory personnel.
11. ~~"Trained professional" means a person who has completed the applicable hazardous waste training requirements of section 33.1-24-05-07 for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with paragraph 3 of subdivision e of subsection 4 of section 33.1-24-03-12 for small quantity generators and conditionally exempt small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.~~ "Trained professional" means a person who has completed the applicable training requirements in section 33.1-24-03-29 for large quantity generators; or is knowledgeable about normal and emergency operations in accordance with section 33.1-24-03-28 for small and very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.
12. "Unwanted material" means any chemical, mixtures of chemicals, products of experiments, or other material from a laboratory that is no longer needed, wanted, or usable in the laboratory and that is destined for hazardous waste determination by a trained professional. Unwanted materials include reactive acutely hazardous unwanted materials and materials that may eventually be determined not to be solid waste pursuant to section 33.1-24-02-02, or a hazardous waste pursuant to section 33.1-24-02-03. If an eligible academic entity elects to use another equally effective term in lieu of "unwanted material", as allowed by paragraph 1 of subdivision a of subsection 1 of section 33.1-24-03-67, the equally effective term has the same meaning and is subject to the same requirements as "unwanted material" under sections 33.1-24-03-60 through 33.1-24-03-77.
13. "Working container" means a small container (for example, two gallons or less) that is in use at a laboratory bench, hood, or other work station, to collect unwanted material from a laboratory experiment or procedure.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-62. Applicability of sections 33.1-24-03-60 through 33.1-24-03-77.

1. Large quantity generators and small quantity generators. Sections 33.1-24-03-60 through 33.1-24-03-77 provide alternative requirements to the requirements in section 33.1-24-03-02 and ~~subsection 3 of section 33.1-24-03-12~~ 33.1-24-03-27 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible

academic entities that choose to be subject to sections 33.1-24-03-60 through 33.1-24-03-77, provided that the eligible academic entity completes the notification requirements of section 33.1-24-03-64.

2. ~~Conditionally-exempt~~Very small quantity generators. Sections 33.1-24-03-60 through 33.1-24-03-77 provide alternative requirements to the conditional exemption in subsection 2 of section 33.1-24-02-05 for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to sections 33.1-24-03-60 through 33.1-24-03-77, provided that the eligible academic entity completes the notification requirements of section 33.1-24-03-64.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-63. Complying with sections 33.1-24-03-60 through 33.1-24-03-77 is optional for eligible academic entities.

1. Large quantity generators and small quantity generators. Eligible academic entities have the option of complying with sections 33.1-24-03-60 through 33.1-24-03-77 with respect to the eligible academic entity's laboratories, as an alternative to complying with the requirements of section 33.1-24-03-02 and ~~subsection 3 of section 33.1-24-03-12~~[33.1-24-03-27](#).
2. ~~Conditionally-exempt~~Very small quantity generators. Eligible academic entities have the option of complying with sections 33.1-24-03-60 through 33.1-24-03-77 with respect to the eligible academic entity's laboratories, as an alternative to complying with the conditional exemption of subsection 2 of section 33.1-24-02-05.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-64. Notification by an eligible academic entity electing to comply with sections 33.1-24-03-60 through 33.1-24-03-77.

1. An eligible academic entity must notify the department, in writing, using the ~~identification form~~[Resource Conservation and Recovery Act subtitle C site identification form \(environmental protection agency form 8700-12\)](#), that the eligible academic entity is electing to be subject to the requirements of sections 33.1-24-03-60 through 33.1-24-03-77 for all the laboratories owned by the eligible academic entity under the same identification number. An eligible academic entity that is a ~~conditionally-exempt~~very small quantity generator and does not have an identification number must notify that the eligible academic entity is electing to be subject to the requirements of sections 33.1-24-03-60 through 33.1-24-03-77 for all the laboratories owned by the eligible academic entity that are onsite, as defined by section 33.1-24-01-04. An eligible academic entity must submit a separate notification for each identification number (or site, for ~~conditionally-exempt~~very small quantity generators) that is electing to be subject to the requirements of sections 33.1-24-03-60 through 33.1-24-03-77, and must submit the identification form before the eligible academic entity begins operating under sections 33.1-24-03-60 through 33.1-24-03-77.
2. When submitting the identification form, the eligible academic entity must, at a minimum, fill out the following fields on the form:
 - a. Reason for submittal.
 - b. Identification number (except for ~~conditionally-exempt~~very small quantity generators).

- c. Site name.
 - d. Site location information.
 - e. Site land type.
 - f. North American industry classification system codes for the site.
 - g. Site mailing address.
 - h. Site contact person.
 - i. Operator and legal owner of the site.
 - j. Type of regulated waste activity.
 - k. Certification.
3. An eligible academic entity must keep a copy of the notification on file at the eligible academic entity for as long as the eligible academic entity's laboratories are subject to sections 33.1-24-03-60 through 33.1-24-03-77.
 4. A teaching hospital that is not owned by a college or university must keep a copy of the teaching hospital's formal written affiliation agreement with a college or university on file at the teaching hospital for as long as the teaching hospital's laboratories are subject to sections 33.1-24-03-60 through 33.1-24-03-77.
 5. A nonprofit research institute that is not owned by a college or university must keep a copy of the nonprofit research institute's formal written affiliation agreement with a college or university on file at the nonprofit research institute for as long as the nonprofit research institute's laboratories are subject to sections 33.1-24-03-60 through 33.1-24-03-77.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-65. Notification by an eligible academic entity electing to withdraw from complying with sections 33.1-24-03-60 through 33.1-24-03-77.

1. An eligible academic entity must notify the department, in writing, using the ~~identification form~~, [Resource Conservation and Recovery Act subtitle C site identification form \(environmental protection agency form 8700-12\)](#), that it is electing to no longer be subject to the requirements of sections 33.1-24-03-60 through 33.1-24-03-77 for all the laboratories owned by the eligible academic entity under the same identification number and that the eligible academic entity will comply with the requirements of section 33.1-24-03-02 and subsection 3 of section 33.1-24-03-12 for small quantity generators and large quantity generators. An eligible academic entity that is a ~~conditionally exempt~~ [very](#) small quantity generator and does not have an identification number must notify that the eligible academic entity is withdrawing from the requirements of sections 33.1-24-03-60 through 33.1-24-03-77 for all the laboratories owned by the eligible academic entity that are onsite and that the eligible academic entity will comply with the conditional exemption in subsection 2 of section 33.1-24-02-05. An eligible academic entity must submit a separate notification (identification form) for each identification number (or site, for ~~conditionally exempt~~ [very](#) small quantity generators) that is withdrawing from the requirements of sections 33.1-24-03-60 through 33.1-24-03-77 and must submit the identification form before the eligible academic entity begins operating under the requirements of section 33.1-24-03-02 and subsection 3 of section

33.1-24-03-12 for small quantity generators and large quantity generators, or subsection 2 of section 33.1-24-02-05 for ~~conditionally exempt~~very small quantity generators.

2. When submitting the identification form, the eligible academic entity must, at a minimum, fill out the following fields on the form:
 - a. Reason for submittal.
 - b. Identification number (except for ~~conditionally exempt~~very small quantity generators).
 - c. Site name.
 - d. Site location information.
 - e. Site land type.
 - f. North American industry classification system codes for the site.
 - g. Site mailing address.
 - h. Site contact person.
 - i. Operator and legal owner of the site.
 - j. Type of regulated waste activity.
 - k. Certification.
3. An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-69. Removing containers of unwanted material from the laboratory.

1. Removing containers of unwanted material on a regular schedule. An eligible academic entity must either:
 - a. Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed six months; or
 - b. Remove containers of unwanted material from each laboratory within six months of each container's accumulation start date.
2. The eligible academic entity must specify in part I of its laboratory management plan whether the eligible academic entity will comply with subdivision a or b of subsection 1 for the regular removal of unwanted material from the eligible academic entity's laboratories.
3. The eligible academic entity must specify in part II of its laboratory management plan how the eligible academic entity will comply with subdivision a or b of subsection 1 and develop a schedule for regular removals of unwanted material from the eligible academic entity's laboratories.
4. Removing containers of unwanted material when volumes are exceeded.
 - a. If a laboratory accumulates a total volume of unwanted material (including reactive acutely hazardous unwanted material) in excess of fifty-five gallons before the regularly

scheduled removal, the eligible academic entity must ensure that all containers of unwanted material in the laboratory (including reactive acutely hazardous unwanted material):

- (1) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container) with the date that fifty-five gallons is exceeded; and
 - (2) Are removed from the laboratory within ten calendar days of the date that fifty-five gallons was exceeded, or at the next regularly scheduled removal, whichever comes first.
- b. If a laboratory accumulates more than one quart of liquid reactive acutely hazardous unwanted material or more than one kilogram [2.2 pounds] of solid reactive acutely hazardous unwanted material, before the regularly scheduled removal, then the eligible academic entity must ensure that all containers of reactive acutely hazardous unwanted material:
- (1) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container) with the date that one quart or one kilogram is exceeded; and
 - (2) Are removed from the laboratory within ten calendar days of the date that one quart or one kilogram was exceeded, or at the next regularly scheduled removal, whichever comes first.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-70. Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory.

1. Large quantity generators and small quantity generators. An eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to section 33.1-24-03-02, for unwanted material in any of the following areas:
 - a. In the laboratory before the unwanted material is removed from the laboratory, in accordance with section 33.1-24-03-71.
 - b. Within four calendar days of arriving at an onsite central accumulation area, in accordance with section 33.1-24-03-72.
 - c. Within four calendar days of arriving at an onsite interim status or permitted treatment, storage, or disposal facility, in accordance with section 33.1-24-03-73.
2. ~~Conditionally exempt~~ Very small quantity generators. An eligible academic entity must ensure that a trained professional makes a hazardous waste determination, pursuant to section 33.1-24-03-02, for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with section 33.1-24-03-71.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-71. Hazardous waste determination in the laboratory before the unwanted material is removed.

If an eligible academic entity makes the hazardous waste determination, pursuant to section 33.1-24-03-02, for unwanted material in the laboratory, the eligible academic entity must comply with the following:

1. A trained professional must make the hazardous waste determination, pursuant to section 33.1-24-03-02, before the unwanted material is removed from the laboratory.
2. If an unwanted material is a hazardous waste, the eligible academic entity must:
 - a. Write the words "hazardous waste" on the container label that is affixed or attached to the container, before the hazardous waste may be removed from the laboratory;
 - b. Write the appropriate hazardous waste codes on the label that is associated with the container (or the label that is affixed or attached to the container) before the hazardous waste is transported offsite; and
 - c. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to subsections 3 and 4 of section 33.1-24-02-05, in the calendar month that the hazardous waste determination was made.
3. A trained professional must accompany all hazardous waste that is transferred from the laboratory, or laboratories, to an onsite central accumulation area or onsite interim status or permitted treatment, storage, or disposal facility.
4. When hazardous waste is removed from the laboratory:
 - a. Large quantity generators and small quantity generators must ensure it is taken directly from the laboratory, or laboratories, to an offsite central accumulation area, or onsite interim status or permitted treatment, storage, or disposal facility, or transported offsite.
 - b. ~~Conditionally exempt~~Very small quantity generators must ensure it is taken directly from the laboratory, or laboratories, to any of the types of facilities listed in subdivision c of subsection 6 of section 33.1-24-02-05 for acute hazardous waste, or subdivision c of subsection 7 of section 33.1-24-02-05 for hazardous waste.
5. An unwanted material that is a hazardous waste is subject to all applicable provisions of article 33.1-24, North Dakota hazardous waste management rules, when it is removed from the laboratory.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-72. Hazardous waste determination at an onsite central accumulation area.

If an eligible academic entity makes the hazardous waste determination, pursuant to section 33.1-24-03-02, for unwanted material at an onsite central accumulation area, the eligible academic entity must comply with the following:

1. A trained professional must accompany all unwanted material that is transferred from the laboratory, or laboratories, to an onsite central accumulation area.
2. All unwanted material removed from the laboratory, or laboratories, must be taken directly from the laboratory, or laboratories, to the onsite central accumulation area.

3. The unwanted material becomes subject to the generator accumulation requirements of ~~subsection 1 of section 33.1-24-03-12 for large quantity generators or subsections 4 through 6 of section 33.1-24-03-12 for small quantity generators~~sections 33.1-24-03-27 through 33.1-24-03-28 as soon as the unwanted material arrives in the central accumulation area, except for the "hazardous waste" labeling requirements of ~~subdivision c of subsection 1 of section 33.1-24-03-12~~subsection 6 of section 33.1-24-03-28 and subdivision e of subsection 1 of section 33.1-24-03-29.
4. A trained professional must determine, pursuant to section 33.1-24-03-02, if the unwanted material is a hazardous waste within four calendar days of the unwanted material's arrival at the onsite central accumulation area.
5. If the unwanted material is a hazardous waste, the eligible academic entity must:
 - a. Write the words "hazardous waste" on the container label that is affixed or attached to the container, within four calendar days of arriving at the onsite central accumulation area and before the hazardous waste may be removed from the onsite central accumulation area;
 - b. Write the appropriate hazardous waste codes on the container label that is associated with the container (or on the label that is affixed or attached to the container) before the hazardous waste may be treated, or disposed of onsite or transported offsite;
 - c. Count the hazardous waste toward the eligible academic entity's generator status, pursuant to subsections 3 and 4 of section 33.1-24-02-05 in the calendar month that the hazardous waste determination was made; and
 - d. Manage the hazardous waste according to all applicable provisions of article 33.1-24, North Dakota hazardous waste management rules.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-74. Laboratory clean-outs.

1. One time per twelve-month period for each laboratory, an eligible academic entity may choose to conduct a laboratory clean-out that is subject to all the applicable requirements of sections 33.1-24-03-60 through 33.1-24-03-77, except that:
 - a. If the volume of unwanted material in the laboratory exceeds fifty-five gallons (or one quart of liquid reactive acutely hazardous unwanted material or one kilogram of solid reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of liquid reactive acutely hazardous unwanted material or one kilogram of solid reactive acutely hazardous unwanted material), as required by section 33.1-24-03-69. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within thirty calendar days from the start of the laboratory clean-out;
 - b. For the purposes of onsite accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product (listed in sections 33.1-24-02-15 through 33.1-24-02-19, or exhibiting one or more characteristics in sections 33.1-24-02-10 through 33.1-24-02-14) generated solely during the laboratory clean-out toward its hazardous waste generator status, pursuant to subsections 3 and 4 of section 33.1-24-02-05. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out

commences must be counted toward hazardous waste generator status, pursuant to subsections 3 and 4 of section 33.1-24-02-05, if it is determined to be hazardous waste;

- c. For the purposes of offsite management, an eligible academic entity must count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator status under subdivision b, and if the eligible academic entity generates more than one kilogram per month of acute hazardous waste, or one hundred kilograms per month of hazardous waste (for example, the ~~conditionally exempt~~very small quantity generator limits of section 33.1-24-02-05), the hazardous waste is subject to all applicable hazardous waste regulations when the hazardous waste is transported offsite; and
 - d. An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of three years from the date the clean-out ends; and
2. For all other laboratory clean-outs conducted during the same twelve-month period, an eligible academic entity is subject to all the applicable requirements of sections 33.1-24-03-60 through 33.1-24-03-77, including:
 - a. The requirement to remove all unwanted materials from the laboratory within ten calendar days of exceeding fifty-five gallons (or one quart of reactive acutely hazardous unwanted material), as required by section 33.1-24-03-69; and
 - b. The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator status, pursuant to subsections 3 and 4 of section 33.1-24-02-05.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-03-77. Nonlaboratory hazardous waste generated at an eligible academic entity.

An eligible academic entity that generates hazardous waste outside of a laboratory is not eligible to manage that hazardous waste under sections 33.1-24-03-60 through 33.1-24-03-77; and

1. Remains subject to the generator requirements of section 33.1-24-03-02 and ~~subsection 3 of section 33.1-24-03-12~~ [33.1-24-03-27](#) for large quantity generators and small quantity generators (if the hazardous waste is managed in a satellite accumulation area), and all other applicable generator requirements of chapter 33.1-24-03, with respect to that hazardous waste; or
2. Remains subject to the conditional exemption of subsection 2 of section 33.1-24-02-05 for ~~conditionally exempt~~very small quantity generators, with respect to that hazardous waste.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

CHAPTER 33.1-24-04

33.1-24-04-01. Scope.

1. This chapter establishes standards which apply to persons transporting hazardous waste within this state if the transportation requires a manifest under chapter 33.1-24-03.
2. This chapter does not apply to onsite transportation of hazardous waste by generators or by owners or by operators of permitted hazardous waste management facilities.
3. A transporter of hazardous waste must also comply with chapter 33.1-24-03 if the transporter:
 - a. Transports hazardous waste into this state from abroad; or
 - b. Mixes hazardous waste of different department of transportation shipping descriptions by placing them into a single container.

[NOTE: The transporter in complying with these requirements does not become the generator of the waste.]

4. ~~A transporter of hazardous waste subject to manifesting requirements of chapter 33.1-24-03, or subject to the requirements of sections 33.1-24-05-700 through 33.1-24-05-799, that is being imported from or exported to any of the countries listed in subdivision a of subsection 1 of section 33.1-24-03-25 for purposes of recovery is subject to sections 33.1-24-04-01 through 33.1-24-04-03 and to all other relevant requirements of sections 33.1-24-03-50 through 33.1-24-03-59, including section 33.1-24-03-54 for movement documents.~~ A transporter of hazardous waste that is being imported from, or exported to, any other country for purposes of recovery or disposal is subject to the requirements of this chapter and to all other relevant requirements of sections 33.1-24-03-50 through 33.1-24-03-55 for movement documents.
5. Persons responding to an explosives or munitions emergency in accordance with subparagraph d of paragraph 1 of subdivision g of subsection 6 of section 33.1-24-05-01 or paragraph 4 of subdivision g of subsection 6 of section 33.1-24-05-01 or 40 CFR 265.1(c)(11)(i)(D) or (iv) as incorporated by reference in subsection 5 of section 33.1-24-06-16, and item 4 of subparagraph a and subparagraph c of paragraph 9 of subdivision b of subsection 2 of section 33.1-24-06-01, are not required to comply with the standards of chapter 33.1-24-03.
6. Section 33.1-24-05-823 identifies how the requirements of this chapter apply to military munitions classified as solid waste under section 33.1-24-05-822.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-04-03. Transfer facility requirements.

1. A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of section 33.1-24-03-08 at a transfer facility for a period of ten days or less is not subject to regulation under chapters 33.1-24-05 and 33.1-24-06 with respect to the storage of those wastes.
2. When consolidating the contents of two or more containers with the same hazardous waste into a new container, or when combining and consolidating two different compatible hazardous wastes, the transporter shall mark its containers of one hundred nineteen gallons or less with the following information:
 - a. The words "hazardous waste"; and

- b. The applicable environmental protection agency hazardous waste number (environmental protection agency hazardous waste codes) in chapter 33.1-24-02 or subsection 3 of section 33.1-24-03-10.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-04-04. The manifest system.

1. Transporters subject to manifesting requirements.

- a. Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the provisions of subsections 1 through 7 of section 33.1-24-03-07, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33.1-24-03-04, and signed with a valid and enforceable electronic signature as described in 40 CFR 262.25.
- b. ~~Exports. In the case of exports other than those subject to sections 33.1-24-03-50 through 33.1-24-03-59, a transporter may not accept such waste from a primary exporter or other person if the transporter knows the shipment does not conform to the environmental protection agency acknowledgment of consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an environmental protection agency acknowledgment of consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59, a transporter may not accept hazardous waste without a tracking document that includes all information required by section 33.1-24-03-54.~~ Exports. For exports of hazardous waste subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and for exports occurring under the terms of a consent issued by the environmental protection agency on or after December 31, 2016, a movement document that includes all information required by subsection 4 of section 33.1-24-03-53.
- c. Compliance date for form revisions. The revised manifest form and procedures in sections 33.1-24-01-04, 33.1-24-02-07, 33.1-24-04-04, and 33.1-24-04-05, shall not apply until September 5, 2006 or article 33.1-24 is amended and effective, but not prior to September 5, 2006. The manifest form and procedures in sections 33.1-24-01-04, 33.1-24-02-07, 33.1-24-04-04, and 33.1-24-04-05, contained in article 33.1-24, amended December 1, 2003, shall be applicable until September 5, 2006, or when amended, but not after September 5, 2006.
- d. Use of electronic manifest. Legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33.1-24-03-04, and used in accordance with this section in lieu of environmental protection agency forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these rules to obtain, complete, sign, carry, provide, give, use, or retain a manifest.
- (1) Any requirement in these rules to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

- (2) Any requirement in these rules to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.
 - (3) Any requirement in these rules for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the hazardous materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.
 - (4) Any requirement in these rules for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the e-manifest system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency inspector or authorized department representative.
 - (5) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the environmental protection agency system for which the transporter bears no responsibility.
- e. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.
- f. Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:
- (1) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph 3 of subdivision d, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for the transporter and all subsequent waste handler files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.
 - (2) On each printed copy, the transporter shall include a notation in the special handling and additional description space (item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not preprinted on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.
 - (3) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

- (4) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.
- g. Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgment of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph 3 of subdivision d. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner or operator of the designated facility has signed this printed manifest copy with the owner or operator's ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.
- h. ~~Imposition of user fee for electronic manifest use. A transporter who is a user of the electronic manifest may be assessed a user fee by the environmental protection agency for the origination or processing of each electronic manifest. The environmental protection agency shall maintain and update from time to time the schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The schedule of electronic manifest user fees shall be published by the environmental protection agency as an appendix to 40 CFR Part 262.~~ Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in section 33.1-24-05-38, which applies to corrections made to either paper or electronic manifest records.
2. Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.
3. ~~The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter shall ensure that a copy of the environmental protection agency acknowledgment of consent also accompanies the hazardous waste.~~ The transporter must shall ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by environmental protection agency to the exporter on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by subsection 4 of section 33.1-24-03-53 also accompanies the hazardous waste. In the case of imports occurring under the terms consent issued by the environmental protection agency to the country of export or the importer on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by subsection 4 of section 33.1-24-03-55 also accompanies the hazardous waste.
4. A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

- a. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest;
 - b. Retain one copy of the manifest in accordance with section 33.1-24-04-06; and
 - c. Give remaining copies of the manifest to the accepting transporter or designated facility.
5. The requirements of subsections 3, 4, and 6 do not apply to water (bulk shipment) transporters if:
- a. The hazardous waste is delivered by water (bulk shipment) to the designated facility;
 - b. A shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for exports, and environmental protection agency acknowledgment of consent accompanies the hazardous waste;
 - c. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;
 - d. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and
 - e. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with section 33.1-24-04-06.
6. For shipments involving rail transportation, the requirements of subsections 3, 4, and 5 do not apply and the following requirements do apply:
- a. When accepting hazardous waste from nonrail transporter, the initial rail transporter must:
 - (1) Sign and date the manifest acknowledging acceptance of the hazardous waste;
 - (2) Return a signed copy of the manifest to the nonrail transporter;
 - (3) Forward at least three copies of the manifest to:
 - (a) The next nonrail transporter, if any; or
 - (b) The designated facility, if the shipment is delivered to that facility by rail; or
 - (c) The last rail transporter designated to handle the waste in the United States; and
 - (4) Retain one copy of the manifest and rail shipping paper in accordance with section 33.1-24-04-06;
 - b. ~~Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for exports, an environmental protection agency acknowledgment of consent accompanies the hazardous waste at all times;~~ Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the environmental protection agency identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by the environmental protection agency on or after December 31, 2016, a movement

document that includes all information required by subsection 4 of section 33.1-24-03-53 and subsection 4 of 33.1-24-03-55 accompanies the hazardous wastes at all times.

[NOTE: Intermediate rail transporters are not required to sign ~~either~~ the manifest, movement document, or shipping paper.]

- c. When delivering hazardous waste to the designated facility, a rail transporter must:
 - (1) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and
 - (2) Retain a copy of the manifest or signed shipping paper in accordance with section 33.1-24-04-06;
 - d. When delivering hazardous waste to a nonrail transporter, a rail transporter must:
 - (1) Obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and
 - (2) Retain a copy of the manifest in accordance with section 33.1-24-04-06; and
 - e. Before accepting hazardous waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.
7. Transporters who transport hazardous waste out of the United States must:
- a. Sign and date the manifest in the international shipment's block to indicate the date that the shipment left the United States;
 - b. Retain one copy in accordance with subsection 4 of section 33.1-24-04-06;
 - c. Return a signed copy of the manifest to the generator; and
 - d. ~~Give a copy of the manifest to a United States customs official at the point of departure from the United States.~~ For paper manifests only:
 - (1) Send a copy of the signed manifest to the e-Manifest system in accordance with the allowable methods specified in paragraph 5 of subdivision b of subsection 1 of section 33.1-24-05-38; and
 - (2) For shipments initiated prior to the automated export system filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a United States Customs official at the point of departure from the United States.
8. A transporter transporting hazardous waste from a generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those in section 33.1-24-04-06 provided that:
- a. The waste is being transported pursuant to a reclamation agreement as provided in subsection 5 of section 33.1-24-03-04;
 - b. The transporter records, on a log or shipping paper, the following information for each shipment:
 - (1) The name, address, and identification number of the generator of the waste;
 - (2) The quantity of waste accepted;

- (3) All department of transportation required shipping information; and
 - (4) The date the waste is accepted;
 - c. The transporter carries this record when transporting waste to the reclamation facility; and
 - d. The transporter retains these records for a period of at least three years after termination or expiration of the agreement.
9. Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-04-05. Compliance with the manifest.

- 1. The transporter must deliver the entire quantity of hazardous waste which the transporter has accepted from a generator or a transporter to:
 - a. The designated facility listed on the manifest;
 - b. The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery;
 - c. The next designated transporter; or
 - d. The place outside the United States designated by the generator.

- 2. **Emergency condition.** If the hazardous waste cannot be delivered in accordance with subsection 1, because of an emergency condition other than rejection of the waste by the designated facility, or alternate designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

a. **Transporters without agency authority.** If the hazardous waste is not delivered to the next designated transporter in accordance with subdivision b of subsection 1, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transport additions or substitutions, then the current transporter shall contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(1) The hazardous waste is not delivered in accordance with subdivision b of subsection 1 because of an emergency condition; or

(2) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(3) The generator authorizes the revision.

b. **Transporters with agency authority.** If the hazardous waste is not delivered to the next designated transporter in accordance with subdivision b of subsection 1, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a

new transporter, during transportation without the generator's prior explicit approval, provided that:

(1) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(2) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: "Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf."; and

(3) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

c. Generator liability. The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under subdivision b of this subsection does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

3. If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

a. For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with section 33.1-24-04-06, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in subdivisions a through f of subsection 5 or subdivisions a through f of subsection 6 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16.

b. For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with section 33.1-24-04-06, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with subdivisions a through f of subsection 5 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

CHAPTER 33.1-24-05
STANDARDS FOR TREATMENT, STORAGE, AND DISPOSAL FACILITIES AND FOR THE
MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF
HAZARDOUS WASTE MANAGEMENT FACILITIES

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33.1-24-05-1095 [Reserved]
33.1-24-05-1096 [Reserved]
33.1-24-05-1097 [Reserved]
33.1-24-05-1098 [Reserved]
33.1-24-05-1099 [Reserved]
33.1-24-05-1100 Applicability of Tank Requirements
33.1-24-05-1101 Design and Construction Standards for New Tank Systems or Components
33.1-24-05-1102 Handling and Inspection Procedures During Installation of a New Tank System

- 33.1-24-05-1103 Testing
- 33.1-24-05-1104 Installation Requirements
- 33.1-24-05-1105 Secondary Containment Requirements
- 33.1-24-05-1106 Secondary Containment Devices
- 33.1-24-05-1107 Requirements for Ancillary Equipment
- 33.1-24-05-1108 General Operating Requirements
- 33.1-24-05-1109 Inspections
- 33.1-24-05-1110 Response to Leaks or Spills
- 33.1-24-05-1111 Closure
- 33.1-24-05-1112 Special Requirements for Ignitable or Reactive Wastes
- 33.1-24-05-1113 Special Requirements for Incompatible Wastes
- 33.1-24-05-1114 Air Emission Standards
- 33.1-24-05-1115 [Reserved]
- 33.1-24-05-1116 [Reserved]
- 33.1-24-05-1117 [Reserved]
- 33.1-24-05-1118 [Reserved]
- 33.1-24-05-1119 [Reserved]
- 33.1-24-05-1120 [Reserved]
- 33.1-24-05-1121 [Reserved]
- 33.1-24-05-1122 [Reserved]
- 33.1-24-05-1123 [Reserved]
- 33.1-24-05-1124 [Reserved]
- 33.1-24-05-1125 [Reserved]
- 33.1-24-05-1126 [Reserved]
- 33.1-24-05-1127 [Reserved]
- 33.1-24-05-1128 [Reserved]
- 33.1-24-05-1129 [Reserved]
- 33.1-24-05-1130 Applicability of Containment Building Requirements
- 33.1-24-05-1131 Design and Operating Standards for Containment Buildings
- 33.1-24-05-1132 Requirements to Prevent Releases
- 33.1-24-05-1133 Design and Operating Standards for Liquids
- 33.1-24-05-1134 Waiver from Secondary Containment Requirements
- 33.1-24-05-1135 Containment Building Containing Areas With and Without Secondary Containment
- 33.1-24-05-1136 Detection of Releases
- 33.1-24-05-1137 Containment Buildings Used for Secondary Containment
- 33.1-24-05-1138 Closure
- 33.1-24-05-1139 [Reserved]
- 33.1-24-05-1140 [Reserved]
- 33.1-24-05-1141 [Reserved]
- 33.1-24-05-1142 [Reserved]
- 33.1-24-05-1143 [Reserved]
- 33.1-24-05-1144 [Reserved]
- 33.1-24-05-1145 [Reserved]
- 33.1-24-05-1146 [Reserved]
- 33.1-24-05-1147 [Reserved]
- 33.1-24-05-1148 [Reserved]
- 33.1-24-05-1149 [Reserved]

[RESERVED]

- 33.1-24-05-1150 [Reserved]
- 33.1-24-05-1151 [Reserved]
- 33.1-24-05-1152 [Reserved]
- 33.1-24-05-1153 [Reserved]

33.1-24-05-1154 [Reserved]
33.1-24-05-1155 [Reserved]
33.1-24-05-1156 [Reserved]
33.1-24-05-1157 [Reserved]
33.1-24-05-1158 [Reserved]
33.1-24-05-1159 [Reserved]
33.1-24-05-1160 [Reserved]
33.1-24-05-1161 [Reserved]
33.1-24-05-1162 [Reserved]
33.1-24-05-1163 [Reserved]
33.1-24-05-1164 [Reserved]
33.1-24-05-1165 [Reserved]
33.1-24-05-1166 [Reserved]
33.1-24-05-1167 [Reserved]
33.1-24-05-1168 [Reserved]
33.1-24-05-1169 [Reserved]

33.1-24-05-01. Purpose, scope, and applicability.

1. The purpose of this chapter is to establish minimum standards which define the acceptable management of hazardous waste.
2. The standards in this chapter apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this chapter or chapter 33.1-24-02.
3. The requirements of this chapter apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an underground injection control program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by chapter 33.1-24-06.
4. The requirements of this chapter apply to the owner or operator of a publicly owned treatment works which treats, stores, or disposes of hazardous waste only to the extent they are included in a hazardous waste permit by rule granted to such a person under chapter 33.1-24-06.
5. The requirements of this chapter apply to recyclable materials used in a manner constituting disposal, hazardous waste burned for energy recovery, recyclable materials utilized for precious metal recovery, and spent lead acid batteries being reclaimed.
6. The requirements of this chapter do not apply to:
 - a. The owner or operator of a facility permitted, licensed, or registered by the department to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under section 33.1-24-02-05.
 - b. The owner or operator of a facility managing recyclable materials described in subdivisions b, c, and d of subsection 1 of section 33.1-24-02-06 (except to the extent they are referred to in sections 33.1-24-05-600 through 33.1-24-05-689 or sections 33.1-24-05-201 through 33.1-24-05-209, sections 33.1-24-05-230 through 33.1-24-05-249, or sections 33.1-24-05-525 through 33.1-24-05-549).
 - c. A generator accumulating waste onsite in compliance with ~~section 33.1-24-03-12~~sections 33.1-24-03-26 through 33.1-24-03-29.
 - d. A farmer disposing of pesticide containers from the farmer's own use in compliance with section 33.1-24-03-40.

- e. The owner or operator of a totally enclosed treatment facility, as defined in section 33.1-24-01-04.
- f. The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in section 33.1-24-01-04, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 high total organic carbon subcategory defined in section 33.1-24-05-280, table treatment standards for hazardous wastes, or reactive (D003) waste, to remove the characteristic before land disposal, the owner or operator must comply with the requirements set out in subsection 2 of section 33.1-24-05-08).
- g. Immediate response activities.
 - (1) Except as provided in paragraph 2, a person engaged in treatment or containment activities during immediate response to any of the following situations:
 - (a) A discharge of hazardous waste.
 - (b) An imminent and substantial threat of a discharge of hazardous waste.
 - (c) A discharge of material which, when discharged, becomes a hazardous waste.
 - (d) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in section 33.1-24-01-04.
 - (2) An owner or operator of a facility otherwise regulated by this chapter shall comply with all applicable requirements of sections 33.1-24-05-15 through 33.1-24-05-36.
 - (3) Any person who is covered by paragraph 1 and continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter and chapters 33.1-24-06 and 33.1-24-07.
 - (4) In the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of that person's official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.
- h. A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of section 33.1-24-03-08 at a transfer facility for a period of ten days or less.
- i. The addition of absorbent material to waste in a container (as defined in section 33.1-24-01-04) or the addition of waste to absorbent material in a container provided that these actions occur at the time waste is first placed in a container and subsection 2 of section 33.1-24-05-08 and sections 33.1-24-05-90 and 33.1-24-05-91 are complied with.

- j. Universal waste handlers and universal waste transporters (as defined in section 33.1-24-01-04) handling the wastes listed below. These handlers are subject to regulation under sections 33.1-24-05-700 through 33.1-24-05-799, when handling the below-listed universal wastes:
 - (1) Batteries as described in section 33.1-24-05-702;
 - (2) Pesticides as described in section 33.1-24-05-703;
 - (3) Mercury-containing equipment as described in section 33.1-24-05-704; and
 - (4) Lamps as described in section 33.1-24-05-705.
- 7. The requirements of this chapter apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in sections 33.1-24-05-250 through 33.1-24-05-299.
- 8. Subsection 1 of section 33.1-24-05-09 applies only to facilities subject to regulation under sections 33.1-24-05-89 through 33.1-24-05-190 and sections 33.1-24-05-300 through 33.1-24-05-309.
- 9. Section 33.1-24-05-825 identifies when the requirements of this chapter apply to the storage of military munitions classified as solid waste under section 33.1-24-05-822. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in article 33.1-24.
- 10. The requirements of sections 33.1-24-05-02 through 33.1-24-05-36 and section 33.1-24-05-58 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing, or disposing of hazardous wastes that are not remediation wastes. In these cases, sections 33.1-24-05-02 through 33.1-24-05-36 and section 33.1-24-05-58 do apply to the facility subject to the traditional hazardous waste permit.) Instead of the requirements of sections 33.1-24-05-02 through 33.1-24-05-36, owners or operators of remediation waste management sites must:
 - a. Obtain an identification number by applying to the department using environmental protection agency form 8700-12, or equivalent state form;
 - b. Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to chapter 33.1-24-05, and must be kept accurate and up to date;
 - c. Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the department that:
 - (1) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and
 - (2) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site will not cause a violation of the requirements of this article;

- d. Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. If a hazard is imminent or has already occurred, the owner or operator must take remedial action immediately;
- e. Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of sections 33.1-24-05-01 through 33.1-24-05-190, 3-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819, and on how to respond effectively to emergencies;
- f. Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive, and incompatible waste;
- g. For remediation waste management sites subject to regulation under sections 33.1-24-05-89 through 33.1-24-05-190 and sections 33.1-24-05-300 through 33.1-24-05-309, the owner or operator must design, construct, operate, and maintain a unit within a one hundred-year floodplain to prevent washout of any hazardous waste by a one hundred-year flood, unless the owner or operator can meet the demonstration of subsection 1 of section 33.1-24-05-09;
- h. Not place any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, or underground mine or cave;
- i. Develop and maintain a construction quality assurance program for all surface impoundments, waste piles, and landfill units that are required to comply with subsections 3 and 4 of section 33.1-24-05-119, subsections 2 and 3 of section 33.1-24-05-131, and subsections 3 and 4 of section 33.1-24-05-177 at the remediation waste management site, according to the requirements of section 33.1-24-05-10;
- j. Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;
- k. Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;
- l. Develop, maintain, and implement a plan to meet the requirements in subdivisions b through f, i, and j; and

- m. Maintain records documenting compliance with subdivisions a through l.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-03. Required notices.

1. ~~The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the department and the environmental protection agency in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to sections 33.1-24-03-50 through 33.1-24-03-59 must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the office of enforcement and compliance assurance, office of federal activities, international compliance assurance division (2254A), environmental protection agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; the state; and to the competent authorities of all other countries concerned within three working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than thirty days after the completion of recovery and no later than one calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter; to the competent authority of the country of export; to the environmental protection agency's office of enforcement and compliance assurance at the above address; and the state, by mail, electronic mail without a digital signature followed by mail, or fax followed by mail.~~ The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to sections 33.1-24-03-50 through 33.1-24-03-55 from a foreign source shall submit the following required notices:
 - a. As per subsection 2 of section 33.1-24-03-55, for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from the environmental protection agency and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, shall provide notification of the proposed transboundary movement in English to the environmental protection agency using the allowable methods listed in subdivision a of subsection 2 of section 33.1-24-03-55 at least sixty days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same Resource Conservation and Recovery Act waste codes and organization for economic cooperation and development waste codes, and being sent from the same foreign exporter.
 - b. As per paragraph 15 of subdivision b of subsection 4 of section 33.1-24-03-55, a copy of the movement document bearing all required signatures within three working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit shipment as an export and transit that control the shipment of hazardous waste respectively; and on or after the electronic import export reporting compliance date, to the environmental protection agency electronically using the environmental protection agency's waste import export tracking system, or its successor system. The original of the signed movement document must be maintained at the facility for at least three years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on the environmental protection agency's waste import export tracking system or its successor system, provided that copies are readily available for viewing and production if

requested by any environmental protection agency or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with the environmental protection agency's waste import export tracking system, or its successor system for which the owner or operator of a facility bears no responsibility.

c. As per subdivision d of subsection 6 of section 33.1-24-03-55, if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility shall inform the environmental protection agency, using the allowable methods listed in subdivision a of subsection 2 of section 33.1-24-03-55 of the need to return or arrange alternate management of the shipment.

d. As per subsection 7 of section 33.1-24-03-55, such owner or operator shall:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import export reporting compliance date, to the environmental protection agency electronically using the environmental protection agency's waste import export tracking system, or its successor system.

(2) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority for the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import export reporting compliance date, to the environmental protection agency electronically using the environmental protection agency's waste import export tracking system, or its successor system. The recovery and disposal operations in this paragraph are defined in section 33.1-24-03-51.

2. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator shall notify the new owner or operator in writing of the requirements in this chapter and chapter 33.1-24-06.
3. The owner or operator of a facility that receives hazardous waste from an offsite source (except where the owner or operator is also the generator) shall inform the generator in writing that the owner or operator has the appropriate permit for, and will accept, the waste the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-20. Arrangements with local authorities.

1. The owner or operator shall attempt to make the following arrangements, as appropriate for the types of waste handled at the facility and the potential need for the services of these organizations:

- a. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes.
 - b. Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department and agreements with any others to provide support to the primary emergency authority.
 - c. Agreements with state emergency response teams, emergency response contractors, and equipment suppliers.
 - d. Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.
2. ~~Where state or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.~~ The owner or operator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.
 3. A facility possessing twenty-four-hour response capabilities may seek a waiver from the authority having jurisdiction over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department or any other organization necessary to respond to an emergency, provided the waiver is documented in the operating record.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-32. [Reserved] Quick reference guide for contingency plans.

1. A large quantity generator that first becomes subject to these provisions after May 30, 2017, or a large quantity generator that is otherwise amending its contingency plan, at that time, shall submit a quick reference guide of the contingency plan to the local emergency responders identified in section 33.1-24-05-28, or the local emergency planning committee as appropriate. The quick reference guide must include the following elements:
 - a. The types, names, and associated hazards of each hazard waste present at any one time (e.g., toxic paint wastes, spent ignitable solvent, corrosive acid, etc.);
 - b. The estimated maximum amount of each hazardous waste that may be present at any one time;
 - c. The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;
 - d. A map of the facility showing where hazardous wastes are generated, accumulated, and treated along with routes for accessing these wastes;
 - e. A street map of the facility in relation to surrounding businesses, schools, and residential areas to understand how best to get to the facility and evacuate citizens and workers;

- f. The locations of water supply (e.g., fire hydrants and its flow rate);
 - g. The identification of onsite notification systems (e.g., an offsite fire alarm, smoke alarms); and
 - h. The name of the emergency coordinator and twenty-four/seven emergency telephone number or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.
2. Generators shall update, if necessary, their quick reference guides whenever the contingency plan is amended. The amended documents must be submitted to the emergency responders identified in section 33.1-24-05-28 or the local emergency planning committee as appropriate.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-38. Use of manifest system.

1. If a facility receives:
- a. Hazardous waste accompanied by a manifest, the owner or operator, or the owner's or operator's agent shall sign and date the manifest as indicated in subdivision b to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.
 - b. A hazardous waste shipment accompanied by a manifest, the owner or operator, or the owner's or operator's agent, shall:
 - (1) Sign and date, by hand, each copy of the manifest;
 - (2) Note any discrepancies in the manifest, as defined in subsection 1 of section 33.1-24-05-39, on each copy of the manifest;
 - (3) Immediately give the transporter at least one copy of the signed manifest;
 - (4) Within thirty days after the delivery, send a copy (page ~~32~~) of the manifest to the generator;
 - (5) ~~Within thirty days of delivery, send the top copy (page 1) of the manifest to the e-manifest system for purposes of data entry and processing. In lieu of mailing this copy to the environmental protection agency, the owner or operator may transmit to the environmental protection agency system an image file of page 1 of the manifest, or both a data string file and the image file corresponding to page 1 of the manifest. Any data or image files transmitted to the environmental protection agency under this paragraph must be submitted in data file and image file formats that are acceptable to the environmental protection agency and that are supported by the environmental protection agency's electronic reporting requirements and by the electronic manifest system; and~~ Paper manifest submission requirements are:
 - (a) Options for compliance on June 30, 2018. Beginning on June 30, 2018, send the top copy (page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to the environmental protection agency, the owner or operator may transmit to the environmental protection agency system an image file of page 1 of the manifest and any continuation sheet, within thirty

days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, the environmental protection agency will not accept mailed paper manifests from facilities for processing in e-Manifest.

(b) Options for compliance on June 30, 2021. Beginning on June 30, 2021, the requirement to submit the top copy (page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the environmental protection agency system an image file of page 1 of the manifest and any continuation sheet, or by transmitting to the environmental protection agency system both a data file and the image file corresponding to page 1 of the manifest and any continuation sheet, within thirty days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(6) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

c. ~~Hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming the environmental protection agency's consent to the import of hazardous waste to the department and to the following address within thirty days of delivery: office of enforcement and compliance assurance, office of federal activities, international compliance assurance division (2254A), environmental protection agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460.~~The owner or operator of a facility receiving hazardous waste subject to sections 33.1-24-03-50 through 33.1-24-03-55 from a foreign source shall:

(1) Additionally list the relevant consent number from consent documentation supplied by the environmental protection agency to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a continuation sheet (environmental protection agency form 8700-22A); and

(2) Send a copy of the manifest within thirty days of delivery to the environmental protection agency using the addresses listed in subsection 5 of section 33.1-24-03-52 until the facility can submit such a copy to the e-Manifest system.

2. If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator's certification, and signatures), the owner or operator, or the owner's or operator's agent, shall:

a. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the shipping paper was received;

b. Note any significant discrepancies (as defined in subsection 1 of section 33.1-24-05-39) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

c. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

- d. Within thirty days after the delivery, send a copy of the signed and dated manifest, or a signed and dated copy of the shipping paper (if the manifest has not been received within thirty days after delivery) to the generator; and
 - e. Retain at the facility a copy of each shipping paper (if signed in lieu of the manifest at the time of delivery) and manifest for at least three years from the date of delivery.
3. If a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of chapter 33.1-24-03.
4. Within three working days of the receipt of a shipment subject to sections 33.1-24-03-50 through 33.1-24-03-59, the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the exporter, to the office of enforcement and compliance assurance, office of federal activities, international compliance assurance division (2254A), environmental protection agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, the state, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three years from the date of signature.
5. A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated federally) as hazardous wastes under the state's hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.
6. Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33.1-24-03-04, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these rules to obtain, complete, sign, provide, use, or retain a manifest.
 - a. Any requirement in these rules for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.
 - b. Any requirement in these rules to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.
 - c. Any requirement in these rules for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.
 - d. Any requirement in these rules for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-manifest system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency inspector or authorized department representative.
 - e. No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

7. An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.
8. Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:
 - a. Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in item 20 (designated facility certification of receipt) and note any discrepancies in item 18 (discrepancy indication space) of the paper replacement manifest;
 - b. The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest;
 - c. Within thirty days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system; and
 - d. The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.
9. Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least three years from the date of delivery of the waste.
10. ~~Imposition of user fee for electronic manifest use. An owner or operator who is a user of the electronic manifest format may be assessed a user fee by the environmental protection agency for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by the environmental protection agency for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under paragraph 5 of subdivision b of subsection 1. The environmental protection agency shall maintain and update from time to time the schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The schedule of electronic manifest user fees shall be published by the environmental protection agency as an appendix to 40 CFR 262.~~Imposition of user fee for manifest submissions.
 - a. As prescribed in 40 CFR 264.1311, and determined in 40 CFR 264.1312, an owner or operator that is a user of the electronic manifest system must be assessed a user fee by the environmental protection agency for the submission and processing of each electronic and paper manifest. The environmental protection agency shall update the schedule of user fees and publish them to the user community as provided in 40 CFR 264.1313.
 - b. An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of 40 CFR 264.1314, subject to the

informal fee dispute resolution process of 40 CFR 264.1316, and subject to the sanctions for delinquent payments under 40 CFR 264.1315.

11. Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25.
12. Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) shown on the manifest.
 - a. Interested persons shall make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web-based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.
 - b. Each correction submission must include the following information:
 - (1) The manifest tracking number and date of receipt by the facility of the original manifest for which data are being corrected;
 - (2) The item number of the original manifest that is the subject of the submitted correction; and
 - (3) For each item number with corrected data, the data previously entered, and the corresponding data as corrected by the correction submission.
 - c. Each correction submission shall include a statement that the person submitting the corrections certifies that, to the best of their knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:
 - (1) The certification statement must be executed with a valid electronic signature; and
 - (2) A batch upload of data corrections may be submitted under one certification statement.
 - d. Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.
 - e. Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter or by submitting another correction to the system, certified by the respondent as specified in subdivision c of subsection 12 of section 33.1-24-05-38, and with notice of the corrections to other interested persons shown on the manifest.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-45. ~~Reserved~~ Fees for the electronic hazardous waste manifest program.

Users of the electronic manifest system as defined by section 33.1-24-01-04 are subject to the fee requirements set forth by the environmental protection agency in subpart FF of 40 CFR 264, through July 1, 2018.

History: Effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-89. Applicability of requirements for use and management of containers.

1. Sections 33.1-24-05-89 through 33.1-24-05-102 apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as section 33.1-24-05-01 provides otherwise.
2. If a hazardous waste is emptied from a container, the residue remaining in the container is not considered a hazardous waste if the container is "empty" as defined in section 33.1-24-02-07. In that event, management of the container is exempt from the requirements of sections 33.1-24-05-89 through 33.1-24-05-102.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-230. Applicability and requirements for recyclable materials utilized for precious metal recovery.

1. Sections 33.1-24-05-230 through 33.1-24-05-234 apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.
2. Persons who generate, transport, or store recyclable materials that are regulated under sections 33.1-24-05-230 through 33.1-24-05-234 are subject to the following requirements:
 - a. Notification requirements under section 3010 of Resource Conservation and Recovery Act;
 - b. Sections 33.1-24-03-04 through 33.1-24-03-07 (for generators), sections 33.1-24-04-04 and 33.1-24-04-05 (for transporters), and sections 33.1-24-05-38 and 33.1-24-05-39 (for persons who store); and
 - c. ~~For precious metals exported to or imported from designated organization for economic cooperation and development member countries for recovery, sections 33.1-24-03-50 through 33.1-24-03-59 and subsection 1 of section 33.1-24-05-02. For precious metals exported to or imported from nonorganization for economic cooperation and development countries for recovery, sections 33.1-24-03-17 through 33.1-24-03-25 and section 33.1-24-03-30.~~ For precious metals exported to or imported from other countries for recovery, sections 33.1-24-03-50 through 33.1-24-03-55.
3. Persons who store recycled materials that are regulated under sections 33.1-24-05-230 through 33.1-24-05-234 must keep the following records to document that they are not accumulating these materials speculatively (as defined in subsection 3 of section 33.1-24-02-01):
 - a. Records showing the volume of these materials stored at the beginning of the calendar year;
 - b. The amount of these materials generated or received during the calendar year; and
 - c. The amount of materials remaining at the end of the calendar year.
4. Recyclable materials that are regulated under sections 33.1-24-05-230 through 33.1-24-05-234 that are accumulated speculatively (as defined in subsection 3 of section 33.1-24-02-01) are subject to all applicable provisions of chapters 33.1-24-03 through 33.1-24-07.

History: Effective January 1, 2019; [amended July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-235. Applicability and requirements of spent lead-acid batteries being reclaimed.

1. For a facility that generates, collects, transports, stores, or regenerates lead-acid batteries for reclamation purposes, the facility may be exempt from certain hazardous waste management requirements. Use the following table to determine which requirements apply. Alternatively, a generator may choose to manage spent lead-acid batteries under the universal waste rules in sections 33.1-24-05-700 through 33.1-24-05-799.

If the batteries:	And if you:	Then you:	And you:
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).		Are exempt from chapters 33.1-24-03 (except for section 33.1-24-03-02), 33.1-24-04, 33.1-24-06, and 33.1-24-07 and sections 33.1-24-05-01 through 33.1-24-05-599 and 33.1-24-05-800 through 33.1-24-05-929, and the notification requirements of section 33.1-24-03-03.	Are subject to chapter 33.1-24-02 and section 33.1-24-03-02.
(2) Will be reclaimed other than through regeneration.	Generate, collect, or transport, or any combination of the above, these batteries.	Are exempt from chapters 33.1-24-03 (except for section 33.1-24-03-02), 33.1-24-04, 33.1-24-06, and 33.1-24-07 and sections 33.1-24-05-01 through 33.1-24-05-249, 33.1-24-05-300 through 33.1-24-05-599, and 33.1-24-05-800 through 33.1-24-05-929, and the notification requirements of section 33.1-24-03-03.	Are subject to chapter 33.1-24-02 and section 33.1-24-03-02, and the applicable provisions of sections 33.1-24-05-250 through 33.1-24-05-299.
(3) Will be reclaimed other than through regeneration.	Store these batteries but are not the reclaimer.	Are exempt from chapters 33.1-24-03 (except for section 33.1-24-03-02), 33.1-24-04,	Are subject to chapter 33.1-24-02 and section 33.1-24-03-02, and the applicable

		33.1-24-06, and 33.1-24-07 and sections 33.1-24-05-01 through 33.1-24-05-249, 33.1-24-05-300 through 33.1-24-05-599, and 33.1-24-05-800 through 33.1-24-05-929, and the notification requirements of section 33.1-24-03-03.	provisions of sections 33.1-24-05-250 through 33.1-24-05-299.
(4) Will be reclaimed other than through regeneration.	Store these batteries before you reclaim them.	Must comply with subsection 2 of section 33.1-24-05-235 and, as appropriate, other regulatory provisions in subsection 2 of section 33.1-24-06-235.	Are subject to chapter 33.1-24-02 and section 33.1-24-03-02, and the applicable provisions of sections 33.1-24-05-250 through 33.1-24-05-299.
(5) Will be reclaimed other than through regeneration.	Do not store these batteries before you reclaim them.	Are exempt from chapters 33.1-24-03 (except for section 33.1-24-03-02), 33.1-24-04, 33.1-24-06, and 33.1-24-07 and sections 33.1-24-05-01 through 33.1-24-05-249, 33.1-24-05-300 through 33.1-24-05-599, and 33.1-24-05-800 through 33.1-24-05-929, and the notification requirements of section 33.1-24-03-03.	Are subject to chapter 33.1-24-02 and section 33.1-24-03-02, and the applicable provisions of sections 33.1-24-05-250 through 33.1-24-05-299.
(6) Will be reclaimed through regeneration or any other means.	Export these batteries for reclamation in a foreign country.	Are exempt from chapters 33.1-24-03 (except for section 33.1-24-03-02), 33.1-24-04, 33.1-24-06, and 33.1-24-07 and sections 33.1-24-05-01 through 33.1-24-05-599 and	Are subject to chapter 33.1-24-02 and section 33.1-24-03-02, and either must comply with sections 33.1-24-03-50 through 33.1-24-03-59 (if shipping to one of the

~~33.1-24-05-800 through 33.1-24-05-929, and the notification requirements of section 33.1-24-03-03, and except for the applicable requirements in either: (1) Sections 33.1-24-03-50 through 33.1-24-03-59; or (2) Section 33.1-24-03-20, "Notification of Intent to Export", subdivisions a through d and f of subsection 1 and subsection 2 of section 33.1-24-03-23 "Annual Reports", and section 33.1-24-03-24 "Recordkeeping." Are exempt from chapter 33.1-24-03 (except for 33.1-24-03-02, 33.1-24-03-03, 33.1-24-03-14, and 33.1-24-03-50 through 33.1-24-03-59), chapter 33.1-24-04, sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929, chapter 33.1-24-06, chapter 33.1-24-07 and the notification requirements at section 3010 of Resource Conservation and Recovery Act.~~

organization for economic cooperation and development countries specified in subdivision a of subsection 1 of section 33.1-24-03-25, or must: (a) Comply with the requirements applicable to a primary exporter in section 33.1-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33.1-24-03-23 and section 33.1-24-03-24; (b) Export these batteries only upon consent of the receiving country and in conformance with the environmental protection agency acknowledgment of consent as defined in sections 33.1-24-03-17 through 33.1-24-03-25; and (c) Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export. Are subject to chapter 33.1-24-02, section 33.1-24-03-02, and sections 33.1-24-03-50 through 33.1-24-03-55.

(7) Will be reclaimed through regeneration Transport these batteries in the

~~Are exempt from chapters 33.1-24-04,~~

Must comply with applicable

or any other means.	United States to export them for reclamation in a foreign country.	33.1-24-06, and 33.1-24-07 and sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929, and the notification requirements of section 33.1-24-03-03. <u>Are exempt from chapters 33.1-24-04, 33.1-24-05, 33.1-24-06, and 33.1-24-07, and the notification requirements at section 3010 of Resource Conservation and Recovery Act.</u>	requirements in sections 33.1-24-03-50 through 33.1-24-03-59 (if shipping to one of the organization for economic cooperation and development countries specified in subdivision a of subsection 1 of section 33.1-24-03-25, or must comply with the following: (a) May not accept a shipment if the shipment does not conform to the environmental protection agency acknowledgment of consent; (b) Must ensure that a copy of the environmental protection agency acknowledgment of consent accompanies the shipment; and (c) Must ensure that the shipment is delivered to the facility designated by the person initiating the shipment. <u>Must comply with applicable requirements in sections 33.1-24-03-50 through 33.1-24-03-55.</u>
<u>(8) Will be reclaimed other than through regeneration.</u>	<u>Import these batteries from a foreign country and store these batteries, but you aren't the claimer.</u>	<u>Are exempt from chapters 33.1-24-03 (except for sections 33.1-24-03-02, 33.1-24-03-03, and 33.1-24-03-50 through 33.1-24-03-55), 33.1-24-04, sections 33.1-24-05-01 through 33.1-24-05-209, 33.1-24-05-230</u>	<u>Are subject to chapter 33.1-24-02, sections 33.1-24-03-02 and 33.1-24-03-03, 33.1-24-03-50 through 33.1-24-03-55, and applicable provisions under sections 33.1-24-05-250 through</u>

through
33.1-24-05-249,
33.1-24-05-300
through 309,
33.1-24-05-400
through
33.1-24-05-559,
33.1-24-05-800
through
33.1-24-05-929,
chapter 33.1-24-06,
chapter 33.1-24-07,
and the notification
requirements at
section 3010 of
Resource
Conservation and
Recovery Act.

33.1-24-05-299.

(9) Will be reclaimed
other than through
regeneration.

Import these
batteries from a
foreign country, and
store these batteries
before you reclaim
them.

Must comply with
subsection 2 of section
33.1-24-05-235 and as
appropriate other
regulatory provisions
described in
subsection 2 of section
33.1-24-05-235.

Are subject to chapter
33.1-24-02, sections
33.1-24-03-02 and
33.1-24-03-03,
33.1-24-03-50
through
33.1-24-03-55, and
applicable provisions
under sections
33.1-24-05-250
through
33.1-24-05-299.

(10) Will be reclaimed
other than through
regeneration.

Import these
batteries from a
foreign country and
don't store these
batteries before you
reclaim them.

Are exempt from
chapters 33.1-24-03
(except for sections
33.1-24-03-02,
33.1-24-03-03, and
33.1-24-03-50 through
33.1-24-03-55),
33.1-24-04, sections
33.1-24-05-01 through
33.1-24-05-209,
33.1-24-05-230
through
33.1-24-05-249,
33.1-24-05-300
through 309,
33.1-24-05-400
through
33.1-24-05-559,
33.1-24-05-800
through
33.1-24-05-929,
chapter 33.1-24-06,
chapter 33.1-24-07,

Are subject to chapter
33.1-24-03-02,
sections
33.1-24-03-02 and
33.1-24-03-03,
33.1-24-03-50
through
33.1-24-03-55, and
applicable provisions
under sections
33.1-24-05-250
through
33.1-24-05-299.

[and the notification requirements at section 3010 of Resource Conservation and Recovery Act.](#)

2. For a facility that stores spent lead-acid batteries before reclamation, but not through regeneration, the facility is subject to the following requirements:
 - a. Notification under section 33.1-24-03-03.
 - b. All applicable provisions in sections 33.1-24-05-01 through 33.1-24-05-143, and sections 33.1-24-05-950 through 33.1-24-05-1149, except sections 33.1-24-05-04, 33.1-24-05-38, and 33.1-24-05-39.
 - c. All applicable regulations in chapters 33.1-24-06 and 33.1-24-07.

History: Effective January 1, 2019; [amended effective July 1, 2020.](#)

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-250. Purpose, scope, and applicability to land disposal restrictions.

1. Sections 33.1-24-05-250 through 33.1-24-05-299 identify hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.
2. Except as specifically provided otherwise in sections 33.1-24-05-250 through 33.1-24-05-299 or chapter 33.1-24-02, the requirements of sections 33.1-24-05-250 through 33.1-24-05-299 apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.
3. Restricted wastes may continue to be land disposed as follows:
 - a. Where persons have been granted an extension from the effective date of a prohibition under sections 33.1-24-05-266 through 33.1-24-05-279 or pursuant to section 33.1-24-05-254, with respect to those wastes covered by the extension;
 - b. Where persons have been granted an exemption from a prohibition pursuant to a petition under section 33.1-24-05-255, with respect to those wastes and units covered by the petition;
 - c. Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under sections 33.1-24-05-250 through 33.1-24-05-299, or 40 CFR part 148, are not prohibited if the wastes:
 - (1) Are disposed into a nonhazardous or hazardous injection well as defined in 40 CFR 144.6(a); and
 - (2) Do not exhibit any prohibited characteristic of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14 at the point of injection; or
 - d. Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under sections 33.1-24-05-250 through 33.1-24-05-299, are not prohibited if the wastes meet any of the following criteria, unless the wastes are

subject to a specified method of treatment other than deactivation to remove the hazardous characteristic in section 33.1-24-05-280, or are D003 reactive cyanide:

- (1) The wastes are managed in a treatment system which subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Clean Water Act;
 - (2) The wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or
 - (3) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in subsection 1 of section 33.1-24-05-277; and
 - (4) The wastes no longer exhibit a prohibited characteristic at the point of land disposal (for example, placement in a surface impoundment).
4. The requirements of sections 33.1-24-05-250 through 33.1-24-05-299 do not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
 5. The following hazardous wastes are not subject to any provision of sections 33.1-24-05-250 through 33.1-24-05-299:
 - a. Waste generated by very small quantity generators ~~of less than one hundred kilograms of nonacute hazardous waste or less than one kilogram of acute hazardous waste per month, as defined in section 33.1-24-02-05~~ as defined in section 33.1-24-01-04.
 - b. Waste pesticides that a farmer disposes of pursuant to section 33.1-24-03-40.
 - c. Wastes identified or listed as hazardous after November 8, 1984, for which the department has not promulgated land disposal prohibitions or treatment standards.
 - d. De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations (for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves, or other devices used to transfer materials); minor leaks of process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one percent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.
 6. Universal waste handlers and universal waste transporters, as defined in section 33.1-24-01-04, are exempt from sections 33.1-24-05-256 and 33.1-24-05-290 for the wastes listed below. These handlers are subject to regulation under sections 33.1-24-05-700 through 33.1-24-05-799.
 - a. Batteries as described in section 33.1-24-05-702;
 - b. Pesticides as described in section 33.1-24-05-703;
 - c. Mercury-containing equipment as described in section 33.1-24-05-704; and
 - d. Lamps as described in section 33.1-24-05-705.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-256. Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

1. Requirements for generators:

- a. A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in section 33.1-24-05-280, 33.1-24-05-285, or 33.1-24-05-289. This determination can be made concurrently with the hazardous waste determination required in section 33.1-24-03-02, in either of two ways, testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as referenced in section 33.1-24-01-05, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a hazardous waste permitted treatment facility, where the waste treatment facility must comply with the requirements of section 33.1-24-05-04 and subsection 2.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in section 33.1-24-05-280 and are described in detail in section 33.1-24-05-282, table 1. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of section 33.1-24-05-258 in addition to any applicable requirements in this section.
- b. If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether the generator's waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file. The notice must include the information in column "subdivision b" of the generator paperwork requirements table in subdivision d. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the hazardous waste numbers and manifest number of the first shipment and must state "This hazardous waste may or may not be subject to the land disposal restrictions treatment standards. The treatment facility must make the determination".) No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.
 - (1) For contaminated soil, the following certification statement should be included, signed by an authorized representative:

I certify under penalty of law that I personally have examined this contaminated soil and it [does/does not] contain listed hazardous waste and [does/does not] exhibit a

characteristic of hazardous waste and requires treatment to meet the soil treatment standards as provided by subsection 3 of section 33.1-24-05-289.

(2) [Reserved]

c. If the waste or contaminated soil meets the treatment standard at the original point of generation:

(1) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste and place a copy in the file. The notice must include the information indicated in column "subdivision c" of the generator paperwork requirements table in subdivision d of subsection 1 and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in sections 33.1-24-05-280 through 33.1-24-05-289. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(2) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice must include the information in column "subdivision c" of the generator paperwork requirements table in subdivision d of subsection 1.

(3) If the waste changes, the generator must send a new notice and certification to the receiving facility and place a copy in its files. Generators of hazardous debris excluded from the definition of hazardous waste under subsection 5 of section 33.1-24-02-03 are not subject to these requirements.

d. For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed there are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include case-by-case extensions under section 33.1-24-05-254, disposal in a no-migration unit under section 33.1-24-05-255, or a national capacity variance or case-by-case capacity variance under sections 33.1-24-05-266 through 33.1-24-05-279. If a generator's waste is so exempt, then with the initial shipment of waste, the generator must send a one-time written notice to each land disposal facility receiving the waste. The notice must include the information indicated in column "subdivision d" of the generator paperwork requirements table. If the waste changes, the generator must send a new notice to the receiving facility and place a copy in its files.

Generator Paperwork Requirements Table

Required Information*	Subdivision b	Subdivision c	Subdivision d	Subdivision i
1. Environmental protection agency hazardous waste numbers and manifest number of first shipment.	√	√	√	√
2. Statement: This waste is not prohibited from land disposal.			√	

Generator Paperwork Requirements Table

Required Information*	Subdivision b	Subdivision c	Subdivision d	Subdivision i
3. The waste is subject to the land disposal restrictions. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the land disposal restriction notice.	√	√		
4. The notice must include the applicable wastewater/nonwastewater category (see subsections 7 and 11 of section 33-24-05-251) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide).	√	√		
5. Waste analysis data (when available).	√	√	√	
6. Date the waste is subject to the prohibition.			√	
7. For hazardous debris, when treating with the alternative treatment technologies provided by section 33-24-05-285, the contaminants subject to treatment, as described in subsection 2 of section 33-24-05-285; and an indication that these contaminants are being treated to comply with section 33-24-05-285.	√		√	
8. For contaminated soil subject to land disposal restrictions as provided in subsection 1 of section 33-24-05-289, the constituents subject to treatment as described in subsection 4 of section 33-24-05-289, and the following statements: This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by subsection 3 of section 33-24-05-289 or the universal treatment standards.	√	√		
9. A certification is needed (see applicable section for exact wording).		√		√

*Note: Information requirements referenced in the above table can be found in the indicated subdivision of subsection 1.

- e. If a generator is managing and treating prohibited waste, or contaminated soil in tanks, containers, or containment buildings regulated under ~~section 33.1-24-03-12~~sections 33.1-24-03-27 through 33.1-24-03-29 to meet applicable land disposal restriction treatment standards found at section 33.1-24-05-280, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of table 1, section 33.1-24-05-285; however,

are not subject to these waste analysis requirements.) The plan must be kept onsite in the generator's records, and the following requirements must be met:

- (1) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste or wastes being treated and contain all information necessary to treat the waste or wastes in accordance with the requirements of sections 33.1-24-05-250 through 33.1-24-05-299, including the selected testing frequency.
 - (2) Such plan must be kept in the facility's onsite files and made available to inspectors.
 - (3) Wastes shipped offsite pursuant to this subdivision must comply with the notification requirements of subdivision c.
- f. If a generator determines that the waste, or contaminated soil, is restricted based solely on the generator's knowledge of the waste, all supporting data used to make this determination must be retained onsite in the generator's files. If a generator determines that the waste or contaminated soil is restricted based on testing this waste or an extract developed using the test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, incorporated by reference in section 33.1-24-01-05, and all waste analysis data must be retained onsite in the generator's files.
- g. If a generator determines that the generator is managing a prohibited waste that is excluded from the definition of hazardous or solid waste or is exempted from hazardous waste regulation under sections 33.1-24-02-02 through 33.1-24-02-06 subsequent to the point of generation (including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act, as specified at subdivision b of subsection 1 of section 33.1-24-02-04 or that are Clean Water Act-equivalent, or are managed in an underground injection well regulated by the Safe Drinking Water Act), the generator must place a one-time notice describing such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from hazardous waste regulation, and the disposition of the waste, in the facility's onsite files.
- h. Generators must retain onsite a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to onsite or offsite treatment, storage, or disposal. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department. The requirements of this subsection apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under sections 33.1-24-02-02 through 33.1-24-02-06, or exempted from hazardous waste regulation, subsequent to the point of generation.
- i. If a generator is managing a lab pack containing hazardous wastes and wishes to use the alternative treatment standard for lab packs found at subsection 3 of section 33.1-24-05-282:
- (1) With the initial shipment of waste to a treatment facility, the generator must submit a notice that provides the information in column "subdivision i" in the generator paperwork requirements table of subdivision d, and the following certification. The certification, which must be signed by an authorized representative and must be placed in the generator's files, must say the following:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix VIII to chapter 33.1-24-05 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at subsection 3 of section 33.1-24-05-282. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

- (2) No further notification is necessary until such time that the wastes in the lab pack change, or the receiving facility changes, in which case a new notice and certification must be sent and a copy placed in the generator's file.
 - (3) If the lab pack contains characteristic hazardous wastes (D001-D043), underlying hazardous constituents (as defined in subsection 10 of section 33.1-24-05-251) need not be determined.
 - (4) The generator must also comply with the requirements in subdivisions f and g.
- j. Small quantity generators with tolling agreements pursuant to subsection 5 of section 33.1-24-03-04 must comply with the applicable notification and certification requirements of subsection 1 for the initial shipment of the waste subject to the agreement. Such generators must retain onsite a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.
2. Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by section 33.1-24-05-04 for permitted facilities or the applicable requirements of subsection 5 of section 33.1-24-06-16 for interim status facilities. Such testing must be performed as provided in subdivisions a, b, and c.
- a. For wastes or contaminated soil with treatment standards expressed in the waste extract (toxicity characteristic leaching procedure), the owner or operator of the treatment facility must test an extract of the treatment residues, using test method 1311 (the toxicity characteristic leaching procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33.1-24-01-05) to assure that the treatment residues extract meet the applicable treatment standards.
 - b. For wastes or contaminated soil with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that they meet the applicable treatment standards.
 - c. A one-time notice must be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice must be placed in the treatment facility's file.
 - (1) No further notification is necessary until such time that the waste or receiving facility change, in which case a new notice must be sent and a copy placed in the treatment facility's file.
 - (2) The one-time notice must include these requirements:

Treatment Facility Paperwork Requirements Table

Required Information	Subsection 2
1. Hazardous waste number or numbers and manifest number of first shipment.	√
2. The waste is subject to the land disposal restrictions. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the land disposal restriction notice.	√
3. The notice must include the applicable wastewater/nonwastewater category (see subsections 7 and 11 of section 33-24-05-251), and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanides).	√
4. Waste analysis data (when available).	√
5. For contaminated soil subject to land disposal restrictions as provided in subsection 1 of section 33-24-05-289, the constituents subject to treatment as described in subsection 4 of section 33-24-05-289, and the following statement: "This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by subsection 3 of section 33-24-05-289."	√
6. A certification is needed (see applicable section for exact wording).	√

- d. The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in section 33.1-24-05-280 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

A certification is also necessary for contaminated soil and it must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in section 33.1-24-05-289 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- (1) A copy of the certification must be placed in the treatment facility's onsite files. If the waste or treatment residue changes, or the receiving facility changes, a new certification must be sent to the receiving facility, and a copy placed in the file.
- (2) Debris excluded from the definition of hazardous waste under subsection 5 of section 33.1-24-02-03 (for example, debris treated by an extraction or destruction technology provided by table 1, section 33.1-24-05-285, and debris that the department has determined does not contain hazardous waste); however, is subject to the notification and certification requirements of subsection 4 rather than the certification requirements of this subsection.

- (3) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in subsection 4 of section 33.1-24-05-280, the certification, signed by an authorized representative, must state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in section 33.1-24-05-282, table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- (4) For characteristic wastes that are subject to the treatment standards in section 33.1-24-05-280 (other than those expressed as a method of treatment), or section 33.1-24-05-289, and that contain underlying hazardous constituents as defined in subsection 10 of section 33.1-24-05-251; if these wastes are treated onsite to remove the hazardous characteristic; and are then sent offsite for treatment of underlying hazardous constituents, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of section 33.1-24-05-280 or 33.1-24-05-289 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- (5) For characteristic wastes that contain underlying hazardous constituents as defined subsection 10 of section 33.1-24-05-251 that are treated onsite to remove the hazardous characteristic to treat underlying hazardous constituents to levels in section 33.1-24-05-288 universal treatment standards, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of section 33.1-24-05-280 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in subsection 10 of section 33.1-24-05-251 have been treated onsite to meet the section 33.1-24-05-288 universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

- e. If the waste or treatment residue will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste or treatment residue offsite must comply with the notice and certification requirements applicable to generators under this section.
- f. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of subsection 2 of section 33.1-24-05-201 regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (the recycler) must, for the initial shipment of waste, prepare a one-time certification described in subdivision d, and a one-time notice which includes the information listed in subdivision c (except the manifest number). The certification and notification must be placed in the facility's onsite files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the onsite files. In addition,

the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

3. Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to subsection 2 of section 33.1-24-05-201, the owner or operator of any land disposal facility disposing any waste subject to restrictions under sections 33.1-24-05-250 through 33.1-24-05-299 must:
 - a. Have copies of the notice and certifications specified in subsection 1 or 2.
 - b. Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the toxicity characteristic leaching procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, as incorporated by reference in section 33.1-24-01-05), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in sections 33.1-24-05-280 through 33.1-24-05-289. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by section 33.1-24-05-04, or the applicable requirements of subsection 5 of section 33.1-24-06-16 for interim status facilities.
4. Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under subsection 5 of section 33.1-24-02-03 (for example, debris treated by an extraction or destruction technology provided by table 1 in section 33.1-24-05-285, and debris that the department has determined does not contain hazardous waste) are subject to the following notification and certification requirements:
 - a. A one-time notification, including the following information, must be submitted to the department:
 - (1) The name and address of the nonhazardous waste facility receiving the treated debris;
 - (2) A description of the hazardous debris as initially generated, including the applicable hazardous waste numbers; and
 - (3) For debris excluded under subdivision a of subsection 5 of section 33.1-24-02-03, the technology from table 1, section 33.1-24-05-285, used to treat the debris.
 - b. The notification must be updated if the debris is shipped to a different facility, and, for debris excluded under subdivision a of subsection 5 of section 33.1-24-02-03, if a different type of debris is treated or if a different technology is used to treat the debris.
 - c. For debris excluded under subdivision a of subsection 5 of section 33.1-24-02-03, the owner or operator of the treatment facility must document and certify compliance with the treatment standards of table 1 in section 33.1-24-05-285, as follows:
 - (1) Records must be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;
 - (2) Records must be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and
 - (3) For each shipment of treated debris, a certification of compliance with the treatment standards must be signed by an authorized representative and placed in the facility's files. The certification must state the following:

I certify under penalty of law that the debris has been treated in accordance with the requirements of section 33.1-24-05-285. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment.

5. Generators and treaters who first receive from the department a determination that a given contaminated soil subject to the land disposal restrictions as provided in subsection 1 of section 33.1-24-05-289 no longer contains a listed hazardous waste and generators and treaters who first determine that a contaminated soil subject to the land disposal restrictions as provided in subsection 1 of section 33.1-24-05-289 no longer exhibits a characteristic of hazardous waste must:
 - a. Prepare a one-time only documentation of these determinations, including all supporting information; and
 - b. Maintain that information in the facility files and other records for a minimum of three years.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-290. Prohibitions on storage of restricted wastes.

1. Except as provided in this section, the storage of hazardous wastes restricted from land disposal under sections 33.1-24-05-266 through 33.1-24-05-279 is prohibited, unless the following conditions are met:
 - a. A generator stores such wastes in tanks, containers, or containment buildings onsite solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in ~~section 33.1-24-03-12~~sections 33.1-24-03-28 or 33.1-24-03-29, chapter 33.1-24-05, and the applicable requirements of subsection 5 of section 33.1-24-06-16;
 - b. An owner or operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:
 - (1) Each container is clearly marked to identify its contents and ~~the date each period of accumulation begins; and~~
 - ~~(2) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner or operator shall comply with the operating record requirements specified in section 33.1-24-05-40; and~~with:
 - (a) The words "hazardous waste";
 - (b) The applicable environmental protection agency hazardous waste number (environmental protection agency hazardous waste codes) identified in chapter 33.1-24-02; or use a nationally recognized electronic system, such as bar coding, to identify the environmental protection agency hazardous waste numbers;

(c) An indication of the hazards of the contents (examples include the applicable hazardous waste characteristic (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the department of transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704); and

(d) The date each period of accumulation begins.

- c. A transporter stores manifested shipments of such wastes at a transfer facility for ten days or less.
2. An owner or operator of a treatment, storage, or disposal facility may store such wastes for up to one year unless the department can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal.
 3. An owner or operator of a treatment, storage, or disposal facility may store such wastes beyond one year; however, the owner or operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal.
 4. If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste, for example, because of an approved case-by-case extension under section 33.1-24-05-254, or a national capacity variance under sections 33.1-24-05-266 through 33.1-24-05-279, the prohibition in subsection 1 does not apply during the period of such exemption.
 5. The prohibition in subsection 1 does not apply to hazardous wastes that meet the treatment standard specified under sections 33.1-24-05-281, 33.1-24-05-282, and 33.1-24-05-283 or the treatment standard specified under the variance in section 33.1-24-05-284, or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in section 33.1-24-04-272 or Resource Conservation and Recovery Act section 3004.
 6. Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to fifty parts per million must be stored at a facility that meets the requirements of 40 CFR 761.65(b) and must be removed from storage and treated or disposed as required under sections 33.1-24-05-250 through 33.1-24-05-299 within one year of the date when such wastes are first placed into storage. The provisions of subsection 3 do not apply to such polychlorinated biphenyls wastes prohibited under section 33.1-24-05-272.
 7. The prohibition and requirements in this section do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to section 33.1-24-05-554.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-400. Applicability to air emission standards for process vents.

1. The regulations of sections 33.1-24-05-400 through 33.1-24-05-419 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in section 33.1-24-05-01).

2. Except for subsections 4 and 5 of section 33.1-24-05-404, sections 33.1-24-05-400 through 33.1-24-05-419 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least ten parts per million weight, if these operations are conducted in one of the following:
 - a. A unit that is subject to the permitting requirements of chapter 33.1-24-06;
 - b. A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of ~~subsection 1 of section 33.1-24-03-12~~[section 33.1-24-03-27](#) (for example, a hazardous waste recycling unit that is not a ninety-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of chapter 33.1-24-06; or
 - c. A unit that is exempt from permitting under the provisions of ~~subsection 1 of section 33.1-24-03-12~~[section 33.1-24-03-27](#) (for example, a ninety-day tank or container) and is not a recycling unit under the provisions of section 33.1-24-02-06.
3. For the owner and operator of a facility subject to sections 33.1-24-05-400 through 33.1-24-05-419 and who received a final state-issued hazardous waste permit under article 33.1-24 prior to December 6, 1996, the requirements of section 33.1-24-05-400 through 33.1-24-05-419 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of section 33.1-24-07-11 or reviewed in accordance with the requirements of subsection 1 of section 33.1-24-06-06. Until such date when the owner and operator receive a final state-issued hazardous waste permit incorporating the requirements of sections 33.1-24-05-400 through 33.1-24-05-419, the owner and operator are subject to the applicable requirements of subsection 5 of section 33.1-24-06-16.

Note: The requirements of sections 33.1-24-05-402 through 33.1-24-05-406 apply to process vents on hazardous waste recycling units previously exempt under subdivision a of subsection 3 of section 33.1-24-02-06. Other exemptions under section 33.1-24-02-04 and subsection 7 of section 33.1-24-05-01 are not affected by these requirements.

4. [Reserved].
5. The requirements of sections 33.1-24-05-400 through 33.1-24-04-419 do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents would otherwise be subject to sections 33.1-24-05-400 through 33.1-24-05-419 are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, 61, or 63. The documentation of compliance under regulations at 40 CFR part 60, 61, or 63 shall be kept with, or made readily available with, the facility operating record.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-610. Applicability of used oil standards.

This section identifies those materials that are subject to regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689. This section also identifies some materials that are not subject to regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689, and indicates whether these materials may be subject to regulation as hazardous waste under article 33.1-24.

1. **Used oil.** The department presumes that used oil is to be recycled unless a used oil handler disposes of used oil or sends used oil for disposal. Except as provided in section 33.1-24-05-611, the regulations of sections 33.1-24-05-600 through 33.1-24-05-689 apply to

used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14.

2. Mixtures of used oil and hazardous waste.

a. Listed hazardous waste.

- (1) Mixtures of used oil and hazardous waste that is listed in sections 33.1-24-02-15 through 33.1-24-02-19 are subject to regulation as hazardous waste under chapters 33.1-24-01 through 33.1-24-04, chapters 33.1-24-06 and 33.1-24-07, and sections 33.1-24-05-01 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-929, rather than as used oil under sections 33.1-24-05-600 through 33.1-24-05-689.
- (2) Rebuttable presumption for used oil. Used oil containing greater than or equal to one thousand parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in sections 33.1-24-02-15 through 33.1-24-02-19. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix V of chapter 33.1-24-02).
 - (a) The rebuttable presumption does not apply to metalworking oils or fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in subsection 3 of section 33.1-24-05-624, to reclaim metalworking oils or fluids. The presumption does apply to metalworking oils or fluids if such oils or fluids are recycled in any other manner, or disposed.
 - (b) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons removed from refrigeration units where the chlorofluorocarbons are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with chlorofluorocarbons that have been mixed with used oil from sources other than refrigeration units.

b. Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibit one or more of the hazardous waste characteristics identified in sections 33.1-24-02-10 through 33.1-24-02-14 and mixtures of used oil and hazardous waste that is listed in sections 33.1-24-02-15 through 33.1-24-02-19 solely because it exhibits one or more of the characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14 are subject to:

- (1) Except as provided in paragraph 3, regulation as hazardous waste under chapters 33.1-24-01 through 33.1-24-04, chapters 33.1-24-06 and 33.1-24-07, and sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929, rather than as used oil under sections 33.1-24-05-600 through 33.1-24-05-689, if the resultant mixture exhibits any characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14; or
- (2) Except as specified in paragraph 3, regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under sections 33.1-24-02-10 through 33.1-24-02-14.

(3) Regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, for example, ignitable-only mineral spirits, provided that the resultant mixture does not exhibit the characteristic of ignitability under section 33.1-24-02-11.

c. ~~Conditionally exempt~~Very small quantity generator hazardous waste. Mixtures of used oil and ~~conditionally exempt~~very small quantity generator hazardous waste regulated under section 33.1-24-02-05 are subject to regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689.

3. Materials containing or otherwise contaminated with used oil.

a. Except as provided in subdivision b, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(1) Are not used oil and thus not subject to sections 33.1-24-05-600 through 33.1-24-05-689, and

(2) If applicable are subject to the hazardous waste regulations of chapters 33.1-24-01 through 33.1-24-04, chapters 33.1-24-06 and 33.1-24-07, and sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929.

b. Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689.

c. Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689.

4. Mixtures of used oil with products.

a. Except as provided in subdivision b, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689.

b. Mixtures of used oil and diesel fuel mixed onsite by the generator of the used oil for use in the generator's own vehicles are not subject to sections 33.1-24-05-600 through 33.1-24-05-689 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of sections 33.1-24-05-620 through 33.1-24-05-629.

5. Materials derived from used oil.

a. Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (for example, re-refined lubricants) are:

(1) Not used oil and thus are not subject to sections 33.1-24-05-600 through 33.1-24-05-689; and

(2) Not solid wastes and are thus not subject to the hazardous waste regulations of chapters 33.1-24-01 through 33.1-24-04, chapters 33.1-24-06 and 33.1-24-07, and sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through

33.1-24-05-929 as provided in paragraph a of subdivision b of subsection 3 of section 33.1-24-02-03.

- b. Materials produced from used oil that are burned for energy recovery (for example, used oil fuels) are subject to regulation as used oil under sections 33.1-24-05-600 through 33.1-24-05-689.
 - c. Except as provided in subdivision d, materials derived from used oil that are disposed of or used in a manner constituting disposal are:
 - (1) Not used oil and thus are not subject to sections 33.1-24-05-600 through 33.1-24-05-689; and
 - (2) Are solid wastes and thus are subject to the hazardous waste regulations of chapters 33.1-24-01 through 33.1-24-04, chapters 33.1-24-06 and 33.1-24-07, and sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929 if the materials are listed or identified as hazardous wastes.
 - d. Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to sections 33.1-24-05-600 through 33.1-24-05-689.
6. **Wastewater.** Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of sections 33.1-24-05-600 through 33.1-24-05-689. For purposes of this subsection, de minimis quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.
7. **Used oil introduced into crude oil pipelines or a petroleum refining facility.**
- a. Used oil mixed with crude oil or natural gas liquids (for example, in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of sections 33.1-24-05-600 through 33.1-24-05-689. The used oil is subject to the requirements of sections 33.1-24-05-600 through 33.1-24-05-689 prior to the mixing of used oil with crude oil or natural gas liquids.
 - b. Mixtures of used oil and crude oil or natural gas liquids containing less than one percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion in the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of sections 33.1-24-05-600 through 33.1-24-05-689.
 - c. Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of sections 33.1-24-05-600 through 33.1-24-05-689 provided that the used oil constitutes less than one percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion in the petroleum refining facility process, the used oil is subject to the requirements of sections 33.1-24-05-600 through 33.1-24-05-689.
 - d. Except as provided in subdivision e, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of sections 33.1-24-05-600 through 33.1-24-05-689 only if the used oil

meets the specification of section 33.1-24-05-611. Prior to insertion in the petroleum refining facility process, the used oil is subject to the requirements of sections 33.1-24-05-600 through 33.1-24-05-689.

- e. Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of sections 33.1-24-05-600 through 33.1-24-05-689. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (for example, by pouring collected used oil into the wastewater treatment system).
 - f. Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of sections 33.1-24-05-600 through 33.1-24-05-689.
8. **Used oil on vessels.** Used oil produced on vessels from normal shipboard operations is not subject to sections 33.1-24-05-600 through 33.1-24-05-689 until it is transported ashore.
9. **Used oil containing polychlorinated biphenyls.** Used oil containing polychlorinated biphenyls (as defined at 40 CFR 761.3) at any concentration less than fifty parts per million is subject to the requirements of sections 33.1-24-05-600 through 33.1-24-05-689 unless, because of dilution, it is regulated under 40 CFR part 761 as a used oil containing polychlorinated biphenyls at fifty parts per million or greater. Polychlorinated biphenyl-containing used oil subject to the requirements of sections 33.1-24-05-600 through 33.1-24-05-689 may also be subject to the prohibitions and requirements found at 40 CFR part 761, including section 761.20(d) and (e). Used oil containing polychlorinated biphenyls at concentrations of fifty parts per million or greater is not subject to the requirements of sections 33.1-24-05-600 through 33.1-24-05-689, but is subject to regulations under 40 CFR part 761. No person may avoid these provisions by diluting used oil containing polychlorinated biphenyls, unless otherwise specifically provided for in sections 33.1-24-05-600 through 33.1-24-05-689 or 40 CFR part 761.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-708. Applicability - Household and ~~conditionally exempt~~very small quantity generator waste.

- 1. Persons managing the wastes listed below may, at their option, manage them under the requirements of sections 33.1-24-05-700 through 33.1-24-05-799:
 - a. Household wastes that are exempt under subdivision a of subsection 2 of section 33.1-24-02-04 and are also of the same type as the universal wastes defined in section 33.1-24-01-04; or
 - b. ~~Conditionally exempt~~Very small quantity generator wastes that are exempt under section 33.1-24-02-05 and are also of the same type as the universal wastes defined in section 33.1-24-01-04.
- 2. Persons who commingle the wastes described in subdivisions a and b of subsection 1 together with universal waste regulated under sections 33.1-24-05-700 through 33.1-24-05-799 must manage the commingled waste under the requirements of sections 33.1-24-05-700 through 33.1-24-05-799.

History: Effective January 1, 2019; [amended effective July 1, 2020](#).

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-720. Exports.

~~A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those organization for economic cooperation and development countries specified in subdivision a of subsection 1 of section 33.1-24-03-25 (in which case the handler is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59) shall:~~

- ~~1. Comply with the requirements applicable to a primary exporter in section 33.1-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33.1-24-03-23, and section 33.1-24-03-24;~~
- ~~2. Export such universal waste only upon consent of the receiving country and in conformance with environmental protection agency acknowledgment of consent as defined in sections 33.1-24-03-17 through 33.1-24-03-29; and~~
- ~~3. Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export.~~

A small quantity handler of universal waste that sends universal waste to a foreign destination is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-739. Tracking universal waste shipments.

1. **Receipt of shipments.** A large quantity handler of universal waste shall keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document, or other shipping document. The record for each shipment of universal waste received must include the following information:
 - a. The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
 - b. The quantity of each type of universal waste received (for example, batteries, pesticides, mercury-containing equipment, lamps); and
 - c. The date of receipt of the shipment of universal waste.
2. **Shipments offsite.** A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, movement document, or other shipping document. The record for each shipment of universal waste sent must include the following information:
 - a. The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;
 - b. The quantity of each type of universal waste sent (for example, batteries, pesticides, mercury-containing equipment, lamps); and
 - c. The date the shipment of universal waste left the facility.
3. **Record retention.**

- a. A large quantity handler of universal waste shall retain the records described in subsection 1 for at least three years from the date of receipt of the shipment of universal waste.
- b. A large quantity handler of universal waste shall retain the records described in subsection 2 for at least three years from the date a shipment of universal waste left the facility.
- c. The retention period for all records is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the department.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-740. Exports.

~~A large quantity handler of universal waste who sends universal waste to a foreign destination other than those organization for economic cooperation and development countries specified in subdivision a of subsection 1 of section 33.1-24-03-25 (in which case the handler is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59) shall:~~

- ~~1. Comply with the requirements applicable to a primary exporter in section 33.1-24-03-20, subdivisions a through d and f of subsection 1 and subsection 2 of section 33.1-24-03-23, and section 33.1-24-03-24;~~
- ~~2. Export such universal waste only upon consent of the receiving country and in conformance with environmental protection agency acknowledgment of consent as defined in sections 33.1-24-03-17 through 33.1-24-03-29; and~~
- ~~3. Provide a copy of the environmental protection agency acknowledgment of consent for the shipment to the transporter transporting the shipment for export.~~ A large quantity handler of universal waste that sends universal waste to a foreign destination is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-756. Exports.

~~A universal waste transporter transporting a shipment of universal waste to a foreign destination other than those organization for economic cooperation and development countries specified in subdivision a of subsection 1 of section 33.1-24-03-25 (in which case the handler is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59) may not accept a shipment if the transporter knows the shipment does not conform to the environmental protection agency acknowledgment of consent. In addition, the transporter must ensure that:~~

- ~~1. A copy of the environmental protection agency acknowledgment of consent accompanies the shipment; and~~
- ~~2. The shipment is delivered to the facility designated by the person initiating the shipment.~~ A universal waste transporter transporting a shipment of universal waste to a foreign destination is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-762. Tracking universal waste shipments.

1. The owner or operator of a destination facility ~~shall~~**must** keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, **movement document**, or other shipping document. The record for each shipment of universal waste received must include the following information:
 - a. The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;
 - b. The quantity of each type of universal waste received (for example, batteries, pesticides, mercury-containing equipment); and
 - c. The date of receipt of the shipment of universal waste.
2. The owner or operator of a destination facility must retain the records described in subsection 1 for at least three years from the date of receipt of a shipment of universal waste.

History: Effective January 1, 2019; **amended effective July 1, 2020.**

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-770. Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of sections **33.1-24-03-50 through 33.1-24-03-55 and sections** 33.1-24-05-700 through 33.1-24-05-799, immediately after the waste enters the United States, as indicated in subsections 1 through 3:

1. A universal waste transporter is subject to the universal waste transporter requirements of sections 33.1-24-05-750 through 33.1-24-05-759.
2. A universal waste handler is subject to the universal waste handler requirements of sections 33.1-24-05-710 through 33.1-24-05-740, as applicable.
3. An owner or operator of a destination facility is subject to the destination facility requirements of sections 33.1-24-05-760 through 33.1-24-05-762.

~~4. Persons managing universal waste that is imported from an organization for economic cooperation and development country as specified in subdivision a of subsection 1 of section 33.1-24-03-25 are subject to subsections 1 through 3, in addition to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59.~~

History: Effective January 1, 2019; **amended effective July 1, 2020.**

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-781. Factors for petitions to include other wastes under sections 33.1-24-05-700 through 33.1-24-05-799.

1. The waste or category of waste, as generated by a wide variety of generators, is listed in sections 33.1-24-02-15 through 33.1-24-02-19, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14. (When a characteristic waste is added to the universal waste regulations of sections 33.1-24-05-700 through 33.1-24-05-799 by using a generic name to identify the waste category (for example, batteries), the definition of universal waste

in section 33.1-24-01-04 will be amended to include only the hazardous waste portion of the waste category (for example, hazardous waste batteries.) Thus, only the portion of the waste stream that does exhibit one or more characteristics (therefore, is hazardous waste) is subject to the universal waste regulations of sections 33.1-24-05-700 through 33.1-24-05-799;

2. The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, ~~conditionally exempt~~ very small quantity generators, small businesses, government organizations, as well as large industrial facilities);
3. The waste or category of waste is generated by a large number of generators (for example, more than one thousand nationally) and is frequently generated in relatively small quantity by each generator;
4. Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;
5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (for example, waste management requirements appropriate to be added to sections 33.1-24-05-713, 33.1-24-05-733, and 33.1-24-05-752; or applicable department of transportation requirements) would be protective of human health and the environment during accumulation and transport;
6. Regulation of the waste or category of waste under sections 33.1-24-05-700 through 33.1-24-05-799 will increase the likelihood that the waste will be diverted from the nonhazardous waste management systems (for example, the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer, or stormwater systems) to recycling, treatment, or disposal in compliance with the hazardous waste management rules;
7. Regulation of the waste or category of waste under sections 33.1-24-05-700 through 33.1-24-05-799 will improve implementation of the hazardous waste regulatory program; and
8. Such other factors as may be appropriate.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-875. Re-entry into regulation under the hazardous waste management rules.

Low-level mixed waste is no longer eligible for the storage and treatment conditional exemption:

1. When the low-level mixed waste has met the requirements of the generator's, treater's, or other handler's nuclear regulatory commission or nuclear regulatory commission agreement state license for decay-in-storage and can be disposed of as nonradioactive waste, then the conditional exemption for storage no longer applies. On that date the waste is subject to hazardous waste regulation under the applicable sections of article 33.1-24, and the time period for accumulation of a hazardous waste as specified in section ~~33.1-24-03-12~~ 33.1-24-03-28 or 33.1-24-03-29 begins.
2. When a generator's, treater's, or other handler's conditionally exempt low-level mixed waste, which has been generated and stored under a single nuclear regulatory commission or nuclear regulatory commission agreement state license number, is removed from storage, it is

no longer eligible for the storage and treatment exemption, however, the waste may be eligible for the transportation and disposal conditional exemption at section 33.1-24-05-885.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-1011. Use of manifest system.

1. If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or the owner's or operator's agent, shall:
 - a. Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;
 - b. Note any significant discrepancies in the manifest, as defined in subsection 1 of section 33.1-24-05-1012, on each copy of the manifest;
 - c. Immediately give the transporter at least one copy of the signed manifest;
 - d. Within thirty days after the delivery, send a copy of the manifest to the generator; ~~and~~
 - e. Retain at the facility a copy of each manifest for at least three years from the date of delivery; and
 - f. If a facility receives hazardous waste subject to sections 33.1-24-03-50 through 33.1-24-03-59 from a foreign source, the receiving facility shall:
 - (1) Additionally list the relevant consent number from consent documentation supplied by the environmental protection agency to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the receiving facility should use a continuation sheet (environmental protection agency form 8700-22A); and
 - (2) Mail a copy of the manifest to the environmental protection agency using the addresses listed in subsection 5 of section 33.1-24-03-52 within thirty days of delivery until the facility can submit such a copy to the e-Manifest system per paragraph 5 of subdivision b of subsection 1 of section 33.1-24-05-38.
2. If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator's certification, and signatures), the owner or operator, or the owner's or operator's agent, shall:
 - a. Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received.
 - b. Note any significant discrepancies, as defined in subsection 1 of section 33.1-24-05-1012, in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. Note that the department does not intend that the owner or operator of a facility whose procedures under subsection 2 of section 33.1-24-05-963 include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Subsection 2 of section 33.1-24-05-1012, however, requires reporting an unreconciled discrepancy discovered during later analysis.

- c. Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received).
 - d. Within thirty days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within thirty days after delivery, the owner or operator, or the owner's or operator's agent, shall send a copy of the shipping paper signed and dated to the generator. Note that subsection 3 of section 33.1-24-03-07 requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).
 - e. Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.
3. Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of chapter 33.1-24-03. The department notes that the provisions of section ~~33.1-24-03-12~~33.1-24-03-28 or 33.1-24-03-29 are applicable to the onsite accumulation of hazardous wastes by generators. Therefore, the provisions of section ~~33.1-24-03-12~~33.1-24-03-28 or 33.1-24-03-29 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.
4. ~~Within three working days of the receipt of a shipment subject to sections 33.1-24-03-50 through 33.1-24-03-59, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the department, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.~~As per paragraph 15 of subdivision b of subsection 4 of section 33.1-24-05-55, within three working days of the receipt of a shipment subject to sections 33.1-24-03-50 through 33.1-24-03-55, the owner or operator of a facility shall provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively; and on or after the electronic import export reporting compliance date, to the environmental protection agency electronically using the environmental protection agency's waste import export tracking system, or its successor system. The original copy of the movement document must be maintained at the facility for at least three years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on the environmental protection agency's waste import export tracking system, or its successor system, provided that copies are readily available for viewing and production if requested by any environmental protection agency or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility may be held liable for the inability to produce the document is due exclusively to technical difficulty with the environmental protection agency's waste import export tracking system or its successor system, for which the owner or operator of a facility bears no responsibility.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-08; S.L. 2017, ch. 199, § 19

CHAPTER 33.1-24-06

33.1-24-06-16. Operating status prior to the final administrative disposition of the permit application.

1. [Reserved].
2. [Reserved].
3. [Reserved].
4. [Reserved].
5. During operating status prior to final administrative disposition of the permit application, owners or operators shall comply with the federal interim status standards, 40 CFR part 265 and subpart G of part 270, effective ~~April 17, 2015~~ July 1, 2018.
6. Operating status prior to final administrative disposition of the permit application terminates when:
 - a. Final administrative disposition of a permit application, except an application for a remedial action plan under sections 33.1-24-06-30 through 33.1-24-06-35, is made; or
 - b. Operating status prior to final administrative disposition of the permit application is terminated as provided in paragraph 5 of subdivision a of subsection 7 of section 33.1-24-06-01.
7. Operating status prior to final administrative disposition of a permit application does not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under article 33.1-24 has been previously terminated.

History: Effective January 1, 2019; amended effective July 1, 2020.

General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-08; S.L. 2017, ch. 199, § 19

TITLE 54
BOARD OF NURSING

JULY 2020

CHAPTER 54-02-01

54-02-01-06. Examination fees.

The board shall set the fee for licensure by examination. The fee for licensure by examination shall be one hundred ~~ten~~twenty-five dollars. The application is valid for a period of time not to exceed twelve months from the determination of eligibility and the fee is nonrefundable. The candidate shall be responsible for any payment of fees charged by the national council of state boards of nursing for use of the national council licensure examination.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992; January 1, 1994; September 1, 1994; June 1, 2001; June 1, 2002; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(d)

CHAPTER 54-02-05 RELICENSURE

Section

54-02-05-01	Residency or Employment Requirement [Repealed]
54-02-05-02	Renewal Dates
54-02-05-03	Renewal Fees
54-02-05-04	Late Renewal Fee <u>[Repealed]</u>
54-02-05-05	Nonpracticing Nurses
54-02-05-05.1	Practice Requirements for Relicensure
54-02-05-05.2	Limited License
54-02-05-06	Reactivating a License
54-02-05-07	Encumbered License [Repealed]
54-02-05-08	Continuing Education Requirement for Relicensure

54-02-05-03. Renewal fees.

The nonrefundable renewal fee for the registered nurse license will be one hundred ~~twenty~~forty dollars. The nonrefundable renewal fee for the practical nurse license will be one hundred ~~tenthirty~~ dollars.

History: Amended effective November 1, 1979; July 1, 1987; November 1, 1990; June 1, 2001; June 1, 2002; October 1, 2012; July 1, 2020.

General Authority: NDCC 43-12.1-08(2)(d)(k)

Law Implemented: NDCC 43-12.1-10(1)

54-02-05-04. Late renewal fee.

Repealed effective July 1, 2020.

~~—The renewal fee for any practicing nurse will be doubled for any renewal application received in the board office after the expiration date.~~

~~**History:** Amended effective November 1, 1979; June 1, 1982; July 1, 1987; November 1, 1990; September 1, 1994; April 1, 2014.~~

~~**General Authority:** NDCC 43-12.1-08(2)(d)~~

~~**Law Implemented:** NDCC 43-12.1-08(1)~~

54-02-05-06. Reactivating a license.

A nurse previously licensed in North Dakota who applies for reactivation must meet board requirements and includes the following:

1. Complete the application and submit to a criminal history record check according to section 54-02-12-01;
2. Pay the nonrefundable renewal fee and ~~thirty~~fifty dollar reactivation fee; and
3. Meet the requirements in section 54-02-05-05.1, practice requirements for license renewal, and section 54-02-05-08, continuing education requirement for license renewal; or
4. Submit other evidence which would provide proof of nursing competence acceptable to the board.

History: Amended effective June 1, 1982; June 1, 2002; April 1, 2004; July 1, 2008; July 1, 2020.

General Authority: NDCC ~~12-60-24.2(o)~~12-60-24(1)(o), 43-12.1-08

Law Implemented: NDCC 43-12.1-09.1, 43-12.1-10(1), ~~43-12.1-09.1~~

CHAPTER 54-02-06

54-02-06-01. Application and fee.

Applicants licensed as a nurse by examination in another jurisdiction may apply for license by endorsement and must meet board requirements, including submission of:

1. A completed application;
2. A criminal history record check according to chapter 54-02-12;
3. The nonrefundable endorsement fee of one hundred ~~forty~~fifty dollars;
4. Evidence of completion of a nursing education program approved in a jurisdiction which meets or exceeds those requirements outlined in article 54-03.2; and
5. Evidence of nursing practice to demonstrate continued competency which meets or exceeds four hundred hours within the preceding four years or as otherwise approved by the board.

A licensee from another jurisdiction who has an insufficient number of practice hours must meet one of the alternative requirements of section 54-02-05-05.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998; June 1, 2001; June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2011; October 1, 2012; April 1, 2014; July 1, 2020.

General Authority: NDCC ~~12-60-24.2(e)~~12-60-24(2)(o), 43-12.1-09(2)(b)

Law Implemented: NDCC 43-12.1-09(2)(b)

CHAPTER 54-02-07

54-02-07-09. Practice without a license or registration.

1. During the first month of unauthorized practice, an individual seeking to initiate licensure or registration or to renew a license or registration who has failed to complete the registration process within the required time period and has been found to have been practicing nursing or assisting in the practice of nursing without a current license or registration shall be required to:
 - a. Submit double the licensure or registration fee;
 - b. Submit an administrative fee; and
 - c. Complete all other licensure or registration requirements as established by the board.
2. After the first month of unauthorized practice, an individual who has been unintentionally practicing nursing or assisting in the practice of nursing without proper authorization shall be required to:
 - a. Submit double the licensure or registration fee;
 - b. Submit an administrative fee;
 - c. Submit to a criminal history check;
 - d. Successfully complete a course of study on the North Dakota Nurse Practices Act within sixty days; and
 - e. Complete all other licensure or registration requirements as established by the board.
3. The license or registration of an individual who has unintentionally practiced nursing or assisted in the practice of nursing without proper authorization shall be automatically suspended without further proceedings if the requirements of the license or registration are not met within the time specified by the board. The suspension shall remain in effect until the board receives satisfactory evidence of successful completion of the requirements for licensure or registration.
4. If an unlicensed assistive person, whose registration has expired, assists in the practice of nursing without a current registration for a period not exceeding four months from the person's initial date of employment, and if the person has not previously been determined to have assisted in the practice of nursing without a current registration, then the provisions of subsections 1, 2, and 3 of this section shall not apply to that person; instead, the person shall receive a letter of concern and be required to complete all registration requirements as established by the board.
5. Upon compliance with the board rules ~~regrading~~ regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.
6. Disciplinary action for practicing without a license or registration may be expunged from the licensee's or registrant's record if no further violations occur within two years after the imposition of the board's order.

History: Effective August 1, 1988; amended effective September 1, 1994; December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2014; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

**CHAPTER 54-05-02
STANDARDS OF PRACTICE FOR REGISTERED NURSES**

Section

54-05-02-01	Statement of Intent [Repealed]
54-05-02-02	Registered Nurse Responsibility to Implement the Nursing Process [Repealed]
54-05-02-02.1	Registered Nurse Responsibility to Implement the Nursing Process [Repealed]
54-05-02-02.2	Assigning of Nursing Interventions [Repealed]
54-05-02-03	Registered Nurse Responsibilities as a Member of the Nursing Profession [Repealed]
54-05-02-04	Standards Related to Registered Nurse Professional Accountability
54-05-02-05	Standards Related to Registered Nurse Scope of Practice
54-05-02-06	Standards Related to Registered Nurse Responsibility to Act as an Advocate for the Client
54-05-02-07	Standards Related to Registered Nurse Responsibility to Organize, Manage, and Supervise the Practice of Nursing
<u>54-05-02-08</u>	<u>Dispensing in Title X Clinic</u>

54-05-02-08. Dispensing in title X clinic.

A registered nurse may dispense oral contraceptive pills, transdermal contraceptive patches, and vaginal contraceptive rings, pursuant to an order of an authorized prescriber, in the course of working in a title X clinic.

History: Effective July 1, 2020.

General Authority: NDCC 43-12.1, 43-15

Law Implemented: NDCC 43-15-02(7)

CHAPTER 54-05-03.1

54-05-03.1-04. Initial requirements for advanced practice registered nurse licensure.

Applicants for advanced practice registered nurse licensure must:

1. Possess a current license to practice as a registered nurse in North Dakota or in a compact state;
2. Submit evidence of completion of an accredited graduate level advanced practice registered nurse program in one of the four roles and with at least one population focus;
3. Submit evidence of current certification by a national nursing certifying body in the advanced practice registered nurse role and population foci appropriate to educational preparation. Primary source verification of certification is required;
4. Not have an encumbered license or privilege to practice in any state or territory;
5. Submit a completed notarized application and pay the fee of one hundred twenty-five dollars;
6. Certify that scope of practice is consistent with their nursing education and nursing certification; and
7. After December 31, 2015, all applicants for advanced practice registered nurse licensure must meet the licensure requirements in this chapter.

History: Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; June 1, 2001; April 1, 2004; July 1, 2008; April 1, 2011; April 1, 2014; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)(c)(d)

54-05-03.1-06. Requirements for advanced practice registered nurse licensure renewal.

The advanced practice registered nurse license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the advanced practice registered nurse license must possess a current license to practice as a registered nurse in North Dakota or in a compact state and must comply with the following:

1. Complete the advanced practice registered nurse license renewal application;
2. Pay an advanced practice registered nurse licensure renewal fee of fortyeighty dollars; and
3. Submit evidence of current national certification in the appropriate advanced practice registered nurse role and with at least one population focus, or participate in a competence maintenance program recognized by the board.

Any individual holding a license to practice nursing as an advanced practice licensee in this state that is valid on December 31, 2015, shall be deemed to be licensed as an advanced practice registered nurse under the provisions of this chapter with the individual's current privileges and shall be eligible for renewal of such license under the conditions and standards prescribed in this chapter.

History: Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004; April 1, 2011; April 1, 2014; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(1)

54-05-03.1-06.1. Reactivation of a license.

An advanced practice registered nurse previously licensed in North Dakota who applies for reactivation of APRN only must meet board requirements and includes the following:

1. Complete the application and submit to a criminal history record check according to section 54-02-12-01;
2. Pay the nonrefundable renewal fee and ~~thirty~~fifty dollar reactivation fee; and
3. Meet the requirements in section 54-02-05-05.1, practice requirements for license renewal, section 54-02-05-08, continuing education requirement for license renewal and section 54-05-03.1-06 requirements for advanced practice registered nurse licensure renewal; or
4. Submit other evidence the applicant wishes to submit which would provide proof of nursing competence acceptable to the board.

History: Effective July 1, 2008; amended effective July 1, 2020.

General Authority: NDCC 12-60-24.2(o), 43-12.1-08

Law Implemented: NDCC 43-12.1-09.1, 43-12.1-10(1)

54-05-03.1-09. Requirements for prescriptive authority.

Applicants for prescriptive authority shall:

1. Be currently licensed as an advanced practice registered nurse in North Dakota.
2. Submit a complete, notarized prescriptive authority application and pay the fee of ~~fifty~~seventy-five dollars.
3. Submit a completed transcript with degree posted from an accredited graduate level advanced practice registered nurse program and which includes evidence of completion of advanced pharmacotherapy, physical assessment, and pathophysiology.
4. Provide evidence of completion of thirty contact hours of education or equivalent in pharmacotherapy related to the applicant's scope of advanced practice that:
 - a. Have been obtained within a three-year period of time immediately prior to the date of application for prescriptive authority; or
 - b. May otherwise be approved by the board.

History: Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; April 1, 2004; March 24, 2004; April 1, 2011; October 1, 2011; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-02(7), 43-12.1-09(2)(c)(d)

54-05-03.1-11. Prescriptive authority renewal.

Prescriptive authority is valid for the same period of time as the applicant's advanced practice registered nurse and registered nurse license. The applicant for renewal must:

1. Renew the applicant's registered nurse license.
2. Submit verification of current certification by a national nursing certification body in the specific area of nursing practice.
3. Submit a completed advanced practice registered nurse with prescriptive authority renewal application.

4. Pay the advanced practice registered nurse renewal fee of ~~forty~~eighty dollars and the ~~fifty~~seventy-five dollar renewal fee for prescriptive authority.
5. Provide evidence of completion of fifteen contact hours of education during the previous two years in pharmacotherapy related to the scope of practice. These contact hours may fulfill the registered nurse renewal continuing education requirement. The education or its equivalent as approved by the board may include academic credits, attendance at approved seminars and courses, or participation in approved correspondence or home study continuing education courses.

History: Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004; March 24, 2004; April 1, 2011; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(1)

CHAPTER 54-05-03.2

54-05-03.2-04. Initial requirements for specialty practice registered nurse licensure.

The board of nursing shall restrict the issuance of the specialty license to the registered nurse who has submitted evidence of specialization within a defined area of nursing practice.

Applicants for specialty practice registered nurse licensure must:

1. Possess a current license to practice as a registered nurse in North Dakota or a compact state;
2. Submit evidence of experiential expertise gained through the clinical aspect of coursework or employment or submit evidence of additional educational preparation in continuing education programs or formal education in a board-approved program;
3. Submit evidence of current certification by a national certifying body in the specific area of nursing practice;
4. Submit a completed notarized application and pay the fee of one hundred twenty-five dollars;
5. Submit a scope of practice statement for review and approval by the board; and
6. Submit other activities as approved by the board.

History: Effective June 1, 2002; amended effective July 1, 2008; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)(f)

54-05-03.2-05. Requirements for specialty practice registered nurse licensure renewal.

The specialty license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the license must:

1. Renew the registered nurse license;
2. Complete the specialty practice registered nurse license renewal application;
3. Pay the licensure renewal fee of fiftyeighty dollars;
4. Submit evidence of current certification; and
5. Meet the requirements in section 54-05-03.2-08.

History: Effective June 1, 2002; amended effective April 1, 2011; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-09(2)(f)

54-05-03.2-05.1. Reactivation of a license.

A specialty practice registered nurse previously licensed in North Dakota who applies for reactivation must meet board requirements, including the following:

1. Complete the application and submit to a criminal history record check according to section 54-02-12-01;
2. Pay the nonrefundable renewal fee and thirtyfifty dollar reactivation fee; and

3. Meet the requirements in section 54-02-05-05.1 regarding practice requirements for license renewal, section 54-02-05-08 regarding continuing education requirements for license renewal, section 54-05-03.2-05 regarding requirements for specialty practice registered nurse licensure renewal, and section 54-05-03.2-08 regarding change in scope of practice; or
4. Submit other evidence the applicant wishes to submit which would provide proof of nursing competence acceptable to the board.

History: Effective July 1, 2008; amended effective April 1, 2011; [July 1, 2020](#).

General Authority: NDCC ~~12-60-24.2(o)~~ [12-60-24\(2\)\(o\)](#), 43-12.1-08

Law Implemented: NDCC 43-12.1-09.1, 43-12.1-10(1)

CHAPTER 54-07-02

54-07-02-01. Application and fee for unlicensed assistive person registration.

Applicants for registration as ~~an~~ unlicensed assistive person must meet board requirements, including the following:

1. Submit a completed application;
2. Submit to a criminal history record check according to chapter 54-07-02.1;
3. Pay a nonrefundable fee of ~~thirty~~forty dollars; and
4. Submit verification of completion of a recognized formal training program or hold a current registration or certification by a recognized national body.

History: Effective November 1, 1992; amended effective September 1, 1994; February 1, 1998; June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2014; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(2)(h)

54-07-02-01.1. Renewal of registration.

Initial registration will be subject to renewal on or before June thirtieth of the second year following and every two years thereafter. Failure to receive the renewal notification does not relieve the registrant of the obligation to renew the registration by the expiration date.

1. An applicant must submit a completed application form.
2. An applicant must pay the nonrefundable renewal fee of ~~thirty~~forty dollars.
3. An applicant shall submit verification of competency or verification of current certification or registration by board-recognized national bodies.
4. The registration fee for any practicing unlicensed assistive person will be doubled for any renewal application received in the board office after the expiration date.

History: Effective April 1, 2004; amended effective July 1, 2008; April 1, 2014; July 1, 2020.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

54-07-02-02.2. Reactivation of a registration.

An unlicensed assistive person previously registered in North Dakota who applies for reactivation must meet board requirements and includes the following:

1. Submit a completed application;
2. Submit to a criminal history record check according to chapter 54-07-02.1;
3. Pay the nonrefundable registry fee and thirty dollar reactivation fee; and
4. Submit documentation of competency or evidence of current certification or registration by board-recognized national bodies acceptable to the board.

History: Effective July 1, 2008; amended effective April 1, 2014.

General Authority: NDCC ~~12-60-24.2(o)~~12-60-24(2)(o), 43-12.1-08

Law Implemented: NDCC 43-12.1-10(2)

TITLE 69
PUBLIC SERVICE COMMISSION

JULY 2020

CHAPTER 69-06-08

69-06-08-01. Energy conversion facility siting criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a site for an energy conversion facility.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Areas critical to the life stages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet [9.14 meters] on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or belowground infrastructure.
2. **Additional exclusion areas for wind energy conversion facilities.** The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:
 - a. Areas within:

- (1) One and one-tenth times the height of the turbine from the nearest edge of an interstate or state roadway right of way;
 - (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;
 - (3) One and one-tenth times the height of the turbine from the nearest edge of railroad right of way;
 - (4) One and one-tenth times the height of the turbine from the nearest edge of a one hundred fifteen kilovolt or higher transmission line right of way; and
 - (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.
3. **Avoidance areas.** The following geographical areas may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
- a. Historical resources which are not designated as exclusion areas.
 - b. Areas within the city limits of a city or the boundaries of a military installation.
 - c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
 - d. Areas that are geologically unstable.
 - e. Woodlands and wetlands.
 - f. Areas of recreational significance which are not designated as exclusion areas.
4. **Additional avoidance areas for wind energy conversion facilities.** A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.
5. **Selection criteria.** A site may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.
 - b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.
 - (5) Recreational programs and facilities.
 - (6) Transportation facilities and networks.
 - (7) Retail service facilities.
 - (8) Utility services.
 - c. The impact upon:
 - (1) Local institutions.
 - (2) Noise-sensitive land uses.
 - (3) Light-sensitive land uses.
 - (4) Rural residences and businesses.
 - (5) Aquifers.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
 - (9) Temporary and permanent housing.
 - (10) Temporary and permanent skilled and unskilled labor.
 - d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.
6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give

preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

- a. Recycling of the conversion byproducts and effluents.
- b. Energy conservation through location, process, and design.
- c. Training and utilization of available labor in this state for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the state.
- e. Not relocating residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.
- n. A commitment to install lighting mitigation technology for wind energy conversion facilities subject to commercial availability and federal aviation administration approval.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013; July 1, 2017; July 1, 2018; July 1, 2019; [July 1, 2020](#).

General Authority: NDCC 28-32-02, 49-22-18

Law Implemented: NDCC 49-22-05.1, 49-22.1-03

69-06-08-02. Transmission facility corridor and route criteria.

The following criteria must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.

- c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.
 - d. Areas critical to the life stages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet on either side of a direct line between an intercontinental ballistic missile (ICBM) launch facility and a missile alert or launch control facilities to avoid microwave interference. This restriction only applies to aboveground structures, not to surface features, such as roads, or below ground infrastructure.
2. **Avoidance areas.** The following geographical areas may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.
- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.
 - h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
 - (1) Agricultural production.

- (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
- b. The impact upon:
- (1) Sound-sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:
- a. Location and design.
 - b. Training and utilization of available labor in this state for the general and specialized skills required.
 - c. Economies of construction and operation.
 - d. Use of citizen coordinating committees.
 - e. A commitment of a portion of the transmitted product for use in this state.
 - f. Labor relations.
 - g. The coordination of facilities.
 - h. Monitoring of impacts.
 - i. Utilization of existing and proposed rights of way and corridors.
 - j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013; [July 1, 2020](#).

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

ARTICLE 69-09
PUBLIC UTILITY DIVISION

Chapter	
69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
69-09-03	Pipeline Safety
69-09-04	Uniform Sign Standards - Railroad
69-09-05	Standards of Service - Telephone
69-09-05.1	Accounting Practices
69-09-06	Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting [Repealed]
69-09-07	Small Power Production and Cogeneration
69-09-08	Renewable Electricity and Recycled Energy Tracking System
69-09-09	Wind Facility Decommissioning
<u>69-09-10</u>	<u>Solar Facility Decommissioning</u>

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~December 31, 2017~~July 31, 2019, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards
5. Part 194 - Response Plans for Onshore Oil Pipelines
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.
7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

CHAPTER 69-09-09

69-09-09-01. Definitions.

1. "Capacity factor" means the ratio of the actual output generated by a facility for a period of time, to the output that could be produced at the nameplate generating capacity of that facility.
2. "Certificate of operation" means an affidavit executed by the owner certifying to the commission a facility's:
 - a. Nameplate generating capacity;
 - b. Annual capacity factor;
 - c. Annual megawatt hour output; and
 - d. Monthly megawatt hour output.
3. "Commercial wind energy conversion facility" means a wind energy conversion facility with one or more wind turbines that has a total nameplate generating capacity equal to or greater than five hundred kilowatts.
4. "Commission" means the public service commission.
5. "Construction" means any clearing of land, excavation, or other action that would affect the environment of the site of a facility, but does not include activities incident to preliminary engineering or environmental studies.
6. "Decommissioning plan" means a plan filed with the commission that includes:
 - a. The anticipated life of the facility;
 - b. A decommissioning cost estimate, excluding salvage ~~value of the turbines and equipment~~offsets that reduce decommissioning cost;
 - c. A description of the method used for determining the decommissioning cost estimate;
 - d. The anticipated manner in which the project will be decommissioned;
 - e. A description of any expected effects on present and future natural resource development; and
 - f. A detailed plan of financial assurance sufficient to ensure decommissioning.
7. "Existing facility" means a facility for which a certificate of site compatibility ~~has been~~was issued prior to July 1, 2017, or, if no certificate of site compatibility was issued, a facility that commenced operation prior to July 1, 2020.
8. "Facility" means a commercial wind energy conversion facility, including wind turbines, ~~turbine towers, tower~~-bases, blades, ~~pad~~-transformers, ~~collector~~cables, lines, substations, concrete, fences, facility access roads, ~~meteorology towers~~, and all areas disturbed by the construction, operation, maintenance, or decommissioning activities.
9. "Owner" means a person who holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22, or if no certificate was issued, a person who owns a facility or part of a facility.

History: Effective October 1, 2008; amended effective July 1, 2017; July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-05. Decommissioning requirements.

1. Decommissioning the facility includes:

- ~~1.~~ a. Dismantling and removal of all towers, turbine generators, transformers, ~~and~~ fencing, overhead cables, inverters, transformers, substations and other equipment;
- ~~2.~~ b. Removal of underground cables to a depth of twenty-four inches [60.96 centimeters];
- ~~3.~~ c. Removal of foundations, buildings, and ancillary equipment to a depth of:
 - a. (1) Three feet [91.44 centimeters] for facilities constructed before July 1, 2017; and
 - b. (2) Four feet [121.92 centimeters] for facilities constructed on or after July 1, 2017;
- ~~4.~~ d. Site restoration and reclamation to the approximate original topography that existed prior to construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance; and
- ~~5.~~ e. Grading and restoring topsoil of areas disturbed by the facility, and reseeded according to natural resource conservation service recommendations, unless the commission approves an owner request signed by the applicable landowner, identifying the surface features the landowner prefers to remain in place, and the reason the landowner prefers those features to remain.

2. The commission may waive a decommissioning requirement upon receipt of a request signed by the applicable landowner and finding good cause that the requirement be waived.

History: Effective October 1, 2008; amended effective July 1, 2017; July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-07. Existing facilities.

The owner of an existing facility shall provide financial assurance ~~after the tenth year~~ upon ten years of operation sufficient to complete decommissioning.

History: Effective October 1, 2008; amended effective July 1, 2017; July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-09-08. Financial assurance.

1. Prior to commencement of construction of a facility, the owner shall provide financial assurance equal to five percent of the estimated cost of construction of the facility that may be used to decommission the facility in the event it is abandoned prior to operation. Within sixty days of receipt of written notice from the owner that the facility is commercially operational and receipt of financial assurance pursuant to subsection 2, the commission shall return or release said financial assurance provided to the commission.
2. Prior to commencement of operation of a facility, the owner shall provide financial assurance that is acceptable to the commission and sufficient to ensure complete decommissioning.
3. Financial assurance may be in the form of a performance bond either as, or combination of, cash escrow held by a federal insured financial institution, a surety bond, irrevocable letter of

credit, ~~self-guarantee~~guarantee, parent guarantee, or another form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning.

4. The commission may allow the owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of operation.
5. The commission may accept a ~~self-guarantee~~guarantee or parent guarantee if:
 - a. The owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a ~~self-guarantee~~guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and
 - b. The owner or parent guarantor has or is one of the following:
 - (1) A current rating in the "A" category or higher for its most recent bond issuance or issuer rating as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission. If an organization has different ratings among various rating organizations, the commission shall accept the higher of the ratings;
 - (2) A tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liability of 1.2 or greater; or
 - (3) An electric public utility as defined by subsection 2 of North Dakota Century Code section 49-03-01.5.
6. The total amount of an outstanding ~~self-guarantee~~guarantee for decommissioning may not exceed twenty-five percent of the owner's tangible net worth in the United States.
7. The combined total amount of an outstanding ~~self-guarantee~~guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the owner's and parent guarantor's combined tangible net worth in the United States.
8. If any financial assurance is modified, canceled, suspended, or revoked, the owner shall immediately notify the commission and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.
9. The commission may require additional financial assurance upon a finding that the current financial assurance for a facility is not sufficient to ensure complete decommissioning.

History: Effective October 1, 2008; amended effective July 1, 2017; [July 1, 2020](#).

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

CHAPTER 69-09-10
SOLAR FACILITY DECOMMISSIONING

Section

<u>69-09-10-01</u>	<u>Definitions</u>
<u>69-09-10-02</u>	<u>Decommissioning Responsibility</u>
<u>69-09-10-03</u>	<u>Abandonment and Useful Life - Certificate of Operation</u>
<u>69-09-10-04</u>	<u>Decommissioning Period</u>
<u>69-09-10-05</u>	<u>Decommissioning Requirements</u>
<u>69-09-10-06</u>	<u>Decommissioning Plan</u>
<u>69-09-10-07</u>	<u>Existing Facilities</u>
<u>69-09-10-08</u>	<u>Financial Assurance</u>
<u>69-09-10-09</u>	<u>Failure to Decommission</u>
<u>69-09-10-10</u>	<u>Solar Energy Conversion Facility - Waiver</u>

69-09-10-01. Definitions.

1. "Capacity factor" means the ratio of the actual output generated by a facility for a period of time, to the output that could be produced at the nameplate generating capacity of that facility.
2. "Certificate of operation" means an affidavit executed by the owner certifying to the commission a facility's:
 - a. Nameplate generating capacity;
 - b. Annual capacity factor;
 - c. Annual megawatt hour output; and
 - d. Monthly megawatt hour output.
3. "Commercial solar energy conversion facility" means a solar energy conversion facility that has a total nameplate generating capacity equal to or greater than five hundred kilowatts.
4. "Commission" means the public service commission.
5. "Construction" means any clearing of land, excavation, or other action that would affect the environment of the site of a facility, but does not include activities incident to preliminary engineering or environmental studies.
6. "Decommissioning plan" means a plan filed with the commission that includes:
 - a. The anticipated life of the facility;
 - b. A decommissioning cost estimate, excluding salvage offsets that reduce decommissioning cost;
 - c. A description of the method used for determining the decommissioning cost estimate;
 - d. The anticipated manner in which the project will be decommissioned;
 - e. A description of any expected effects on present and future natural resource development; and
 - f. A detailed plan of financial assurance sufficient to ensure decommissioning.

7. "Existing facility" means a facility for which a certificate of site compatibility has been issued prior to July 1, 2020, or, if no certificate of site compatibility was issued, a facility that commenced operation prior to July 1, 2020.
8. "Facility" means a commercial solar energy conversion facility, including solar modules, racking, anchors, bolts, foundations, bases, transformers, cables, lines, substations, concrete, fences, facility access roads, towers, and all areas disturbed by the construction, operation, maintenance, or decommissioning activities.
9. "Owner" means a person that holds a certificate of site compatibility pursuant to North Dakota Century Code chapter 49-22, or if no certificate was issued, a person that owns a facility or part of a facility.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-02. Decommissioning responsibility.

The owner is responsible for decommissioning the facility and for all costs associated with decommissioning.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-03. Abandonment and useful life - Certificate of operation.

1. After construction of a facility is complete, the owner annually shall file a certificate of operation with the commission for that facility by April first of each year.
2. A facility is presumed to be at the end of its useful life if its annual capacity factor is less than five percent for two consecutive years.
3. A facility is presumed to be abandoned if, after commencement of construction and prior to completion, a period of twenty-four consecutive months has passed with no significant construction.
4. A presumption under this section may be rebutted by filing a plan for commission approval outlining the steps and schedule for continuing construction or operation of the facility.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-04. Decommissioning period.

The owner shall begin decommissioning within twelve months after abandonment or the end of its useful life. Decommissioning must be completed within twenty-four months after abandonment or the end of its useful life unless the commission approves a plan specifying the steps and schedules to return the facility to operation.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-05. Decommissioning requirements.

1. Decommissioning the facility includes:

- a. Dismantling and removal of all panel racking, photovoltaic modules, supports, anchors, towers, fencing, overhead cables, inverters, transformers, substations, and other equipment;
- b. Removal of underground cables to a depth of twenty-four inches [60.96 centimeters];
- c. Removal of pilings and anchors, foundations, buildings, and ancillary equipment to a depth of four feet [121.92 centimeters].
- d. Site restoration and reclamation to the approximate original topography that existed prior to construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence prior to the disturbance; and
- e. Grading and restoring topsoil of areas disturbed by the facility, and reseeding according to natural resource conservation service recommendations.

2. The commission may waive a decommissioning requirement upon receipt of a request signed by the applicable landowner and finding good cause that the requirement be waived.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-06. Decommissioning plan.

1. Prior to the commencement of operation of a facility, the owner shall have an approved decommissioning plan.

2. The commission shall make a determination on the decommissioning plan no later than sixty days after the decommissioning plan is deemed complete by the commission.

3. A decommissioning cost estimate for a facility:

- a. Must be made by a professional engineer licensed by the state of North Dakota and at the owner's expense;
- b. May include a decommissioning cost estimate, including salvage value, in addition to the decommissioning cost estimate, excluding salvage value;
- c. Must be updated and filed with the commission ten years after initial approval of the decommissioning plan and then continue to be updated and filed with the commission every five years until decommissioning is complete.

4. The commission may at any time require the owner to file an updated decommissioning plan.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-07. Existing facilities.

The owner of an existing facility shall provide financial assurance upon ten years of operation sufficient to complete decommissioning.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-08. Financial assurance.

1. Prior to commencement of construction of a facility, the owner shall provide financial assurance equal to five percent of the estimated cost of construction of the facility that may be used to decommission the facility in the event it is abandoned prior to operation. Within sixty days of receipt of written notice from the owner that the facility is commercially operational and receipt of financial assurance pursuant to subsection 2, the commission shall return or release said financial assurance provided to the commission.
2. Prior to commencement of operation of a facility, the owner shall provide financial assurance that is acceptable to the commission and sufficient to ensure complete decommissioning.
3. Financial assurance may be in the form of a performance bond either as, or combination of, cash escrow held by a federal insured financial institution, a surety bond, irrevocable letter of credit, guarantee, parent guarantee, or another form of financial assurance that is acceptable to the commission to cover the anticipated costs of decommissioning.
4. The commission may allow the owner to provide financial assurance through an incremental bond schedule. To be given consideration, an incremental bond schedule must include an initial bond increment prior to commencement of operation.
5. The commission may accept a guarantee or parent guarantee if:
 - a. The owner has been in continuous operation as a business entity for five years preceding the application. The commission may accept a guarantee with less than five years of continuous operation if guaranteed with a parent guarantee and the parent company has been in operation for at least five years preceding the application; and
 - b. The owner or parent guarantor has or is one of the following:
 - (1) A current rating in the "A" category or higher for its most recent bond issuance or issuer rating as issued by Moody's Investors Service, Standard and Poor's Corporation, or an equivalent rating by any other nationally recognized statistical rating organization, as defined and approved by the United States securities and exchange commission, that is acceptable to the commission. If an organization has different ratings among various rating organizations, the commission shall accept the higher of the ratings;
 - (2) A tangible net worth of at least ten million dollars, a ratio of total liabilities to net worth of 2.5 or less, and a ratio of current assets to current liability of 1.2 or greater;
or
 - (3) An electric public utility as defined by subsection 2 of North Dakota Century Code section 49-03-01.5.
6. The total amount of an outstanding guarantee for decommissioning may not exceed twenty-five percent of the owner's tangible net worth in the United States.
7. The combined total amount of an outstanding guarantee and parent guarantee for decommissioning may not exceed twenty-five percent of the owner's and parent guarantor's combined tangible net worth in the United States.

8. If any financial assurance is modified, canceled, suspended, or revoked, the owner immediately shall notify the commission and provide financial assurance as soon as practicable sufficient to ensure complete decommissioning.
9. The commission may require additional financial assurance upon a finding that the current financial assurance for a facility is not sufficient to ensure complete decommissioning.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-09. Failure to decommission.

If the owner does not complete decommissioning, the commission may take action to complete decommissioning, including action to require forfeiture of a bond. The entry into a participating landowner agreement constitutes agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the commission may take such action as may be necessary to decommission a facility, including the exercise by the commission, commission staff, and their contractors of the right of ingress and egress for the purpose of decommissioning the facility.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

69-09-10-10. Solar energy conversion facility - Waiver.

The commission may grant a waiver of any requirement described in sections 69-09-10-03, 69-09-10-06, or 69-09-10-08 for a commercial solar energy conversion facility with a nameplate generating capacity of no more than five megawatts of electricity upon a motion demonstrating good cause for the waiver.

History: Effective July 1, 2020.

General Authority: NDCC 28-32-02, 49-02-27

Law Implemented: NDCC 49-02-27

TITLE 72
SECRETARY OF STATE

JULY 2020

ARTICLE 72-03
~~RESERVED~~ BUSINESS

Chapter
72-03-01 Series Limited Liability Company

CHAPTER 72-03-01
SERIES LIMITED LIABILITY COMPANY

Section
72-03-01-01 Definitions
72-03-01-02 Series Disclosure - Domestic
72-03-01-03 Series Disclosure - Foreign
72-03-01-04 Child Series
72-03-01-05 Registered Agent
72-03-01-06 Annual Report
72-03-01-07 Certificates of Good Standing, Existence, and Fact
72-03-01-08 Termination

72-03-01-01. Definitions.

1. "Child series" means a series established under North Dakota Century Code section 10-32.1-102.
2. "Parent limited liability company" means a limited liability company that functions as an umbrella organization over one or more child series.

History: Effective July 1, 2020.

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

72-03-01-02. Series disclosure - Domestic.

The establishment of a series in an operating agreement must be disclosed to the secretary of state.

1. The domestic parent limited liability company shall file articles of organization with the secretary of state.

- a. If the series is established at the time of the filing of articles of organization of the parent limited liability company, the establishment, along with the name of each child series, must be disclosed in those articles of organization.
- b. If the series is established any time after the filing of articles of organization of the parent limited liability company, the establishment, along with the name of each child series, must be disclosed promptly in articles of amendment filed with the secretary of state in compliance with North Dakota Century Code section 10-32.1-21.

2. A copy of the operating agreement may not be accepted by the secretary of state as a form of disclosure of the establishment of a series.

History: Effective July 1, 2020.

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

72-03-01-03. Series disclosure - Foreign.

The establishment of a series in an operating agreement must be disclosed to the secretary of state.

1. The foreign parent limited liability company promptly shall file a certificate of authority with the secretary of state that complies with subsection 13 of North Dakota Century Code section 10-32.1-102.

- a. If the series is established at the time of the filing of the certificate of authority of the parent limited liability company, the establishment, along with the name of each child series that will be transacting business in this state, must be disclosed in that certificate of authority.

- b. If the series is established any time after the filing of the certificate of authority of the parent limited liability company, the establishment, along with the name of each child series that will be transacting business in this state, must be disclosed promptly in an amended certificate of authority filed with the secretary of state in compliance with North Dakota Century Code section 10-32.1-77.

2. A copy of the operating agreement may not be accepted by the secretary of state as a form of disclosure of the establishment of a series.

History: Effective July 1, 2020.

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

72-03-01-04. Child series.

1. The name of each child series must be:

- a. Provided in the parent limited liability company's articles or amended articles of organization, or certificate or amended certificate of authority, filed with the secretary of state; and

- b. Registered as a trade name with the secretary of state under North Dakota Century Code chapter 47-25, with the owner being the parent limited liability company.

2. For transparency purposes, each child series must be named in accordance with one of the following naming convention options:

- a. The name must begin with the full name of the parent limited liability company, followed by the word "series" and the numeric designation beginning with the number 1;

Example:

Parent: Grand Properties LLC
Child: Grand Properties LLC Series 1
Child: Grand Properties LLC Series 2

or

- b. Words to further differentiate the series may be a part of the name if the words:

- (1) Follow the full name of the parent limited liability company;
- (2) Are offset by a hyphen at the beginning and at the end of the differentiating words; and
- (3) Are followed by the word "series" and the numeric designation beginning with the number 1.

Example:

Parent: Grand Properties LLC
Child: Grand Properties LLC - Main Street Apartments - Series 1
Child: Grand Properties LLC - Twilight Manor - Series 2

3. If a parent limited liability company amends its name, the name of each child series also must be amended to conform to the naming requirements in this section.

- a. The amended child series name must be provided in the amended articles of organization or amended certificate of authority in which the parent limited liability company amends its name; and
- b. The trade name of each child series must be canceled and a new trade name must be registered.

History: Effective July 1, 2020.

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

72-03-01-05. Registered agent.

1. A commercial or noncommercial registered agent appointed for the parent limited liability company shall serve as the registered agent for each child series. There is no separate appointment of a registered agent for a child series.
2. A child series may not serve as registered agent for the parent limited liability company.
3. The appointed commercial or noncommercial registered agent shall maintain information on each child series, which must include:
 - a. The name of each child series;
 - b. The names and addresses of all members and managers of each child series; and
 - c. The physical address and either an email address or a telephone number of an individual for each child series who is authorized to receive communications from the registered agent.

4. When the secretary of state is the agent for service of process under subsection 3 of North Dakota Century Code section 10-01.1-13 and a copy of a process, notice, or demand is addressed in accordance with subdivision a of subsection 6 of North Dakota Century Code section 10-01.1-13, the address is the address of record for the parent limited liability company.

History: Effective July 1, 2020.

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

72-03-01-06. Annual report.

The parent limited liability company shall file an annual report in accordance with North Dakota Century Code section 10-32.1-89. A child series is not separately registered as a limited liability company and does not have annual report requirements in this state.

History: Effective July 1, 2020.

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

72-03-01-07. Certificates of good standing, existence, and fact.

Upon request and payment of fees:

1. A certificate of good standing, existence, or fact may be furnished by the secretary of state on the parent limited liability company.
2. A certificate of fact may be furnished by the secretary of state on a child series trade name registration.

History: Effective July 1, 2020.

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

72-03-01-08. Termination.

1. When a child series ceases to exist:
 - a. Amended articles of organization or an amended certificate of authority must be filed with the secretary of state to remove the child series name from the articles or certificate; and
 - b. A request to cancel the trade name of that child series must be filed with the secretary of state.
2. A parent limited liability company that will no longer operate with child series established under North Dakota Century Code section 10-32.1-102, but will continue to exist as a limited liability company, promptly shall disclose this change by filing, with the secretary of state, articles of amendment in compliance with North Dakota Century Code section 10-32.1-21 or an amended certificate of authority in compliance with North Dakota Century Code section 10-32.1-77.
3. When a parent limited liability company is dissolved, each of its child series ceases to exist and any remaining trade names must be canceled in accordance with North Dakota Century Code section 47-25-07.

History: Effective July 1, 2020

General Authority: NDCC 10-32.1-102(14)

Law Implemented: NDCC 10-32.1-102

ARTICLE 72-06 ELECTIONS

Chapter	
72-06-01	Certifying and Decertifying Electronic Counting Machines and Voting Systems
72-06-02	Notification to Military and Overseas Voter of Rejection of Absentee Ballot Request
72-06-03	<u>Tribal Identification for Voting</u>

CHAPTER 72-06-03 TRIBAL IDENTIFICATION FOR VOTING

Section

<u>72-06-03-01</u>	<u>Definitions</u>
<u>72-06-03-02</u>	<u>Tribal Identification</u>
<u>72-06-03-03</u>	<u>Central Voter File and Tribal Identification</u>
<u>72-06-03-04</u>	<u>Supplemental Documentation</u>
<u>72-06-03-05</u>	<u>Tribal Members Voting a Set Aside Ballot</u>

72-06-03-01. Definitions.

1. "Federal" as used in paragraphs three and five of subdivision b of subsection 3 of North Dakota Century Code section 16.1-01-04.1 includes tribal governments within the state.
2. "Supplemental documentation", for the purpose of voting, means documents provided by the sources listed in subdivision b of subsection 3 of North Dakota Century Code section 16.1-01-04.1, including tribal governments in North Dakota, that correct, explain, or add to the information included on an individual's current identification relating to name, date of birth, and residential street address.
3. "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. The term includes:
 - a. The bureau of Indian affairs working on behalf of a tribal government located in North Dakota; or
 - b. A tribal agency or entity of any tribal government located in North Dakota.

History: Effective February 5, 2020.

General Authority: NDCC 16.1-02-11

Law Implemented: NDCC 16.1-01-04.1

72-06-03-02. Tribal identification.

A valid tribal identification for the purposes of voting may be any document deemed official by a tribal government, issued by a tribal government in this state to a tribal member residing in North Dakota, and listing the tribal member's name, date of birth, and residential street address. The secretary of state shall provide a form that a tribal government may use to provide a valid form of voting identification to any tribal members that do not already have a tribal identification, North Dakota driver's license, or North Dakota nondriver's identification. A tribal government may use any form prescribed by the tribal government instead of the form provided by the secretary of state, so long as the form is consistent with this section and North Dakota Century Code section 16.1-01-04.1.

History: Effective February 5, 2020.

General Authority: NDCC 16.1-02-11

Law Implemented: NDCC 16.1-01-04.1

72-06-03-03. Central voter file and tribal identification.

To expedite the use of tribal identification for tribal members residing in North Dakota, the secretary of state shall enter into a memorandum of agreement at the request of any tribal government located in North Dakota for the purposes of receiving tribal identification information regarding tribal members for entry and secure storage in the central voter file. The information provided must be added to a record that already exists in the central voter file or must be used to create a new record if no record for the individual exists in the file. On a regular basis, which must be outlined in the memorandum of agreement, the tribal government shall provide to the secretary of state any changes to a record that have been received from tribal members, which the secretary of state shall use to update the records in the central voter file.

The information provided from tribal governments to the secretary of state for the central voter file must include the tribal member's:

1. Full legal name;
2. Date of birth;
3. Current residential street address in North Dakota;
4. Current mailing address;
5. Tribal identification number;
6. If applicable, the North Dakota driver's license or nondriver's identification number issued to the individual from the department of transportation; and
7. If necessary, any other information that would assist the secretary of state in assigning the tribal member to the proper precinct in which the member resides.

Any memorandum of agreement entered into pursuant to this section must comply with requirements of North Dakota Century Code chapter 54-40.2.

History: Effective February 5, 2020.

General Authority: NDCC 16.1-02-11

Law Implemented: NDCC 16.1-01-04.1

72-06-03-04. Supplemental documentation.

The secretary of state shall provide a form that a tribal government may use for the purpose of providing supplemental documentation to a tribal member whose identification does not provide the tribal member's current name, date of birth, or residential street address. The supplemental documentation provided by a tribal government to a tribal member must be brought by the member to the polling place along with the identification and presented to the poll worker for the correct ballot to be issued. For tribal members voting by absentee or mail ballot, a copy of the supplemental documentation must be provided along with the application for the ballot. A tribal government may use any form prescribed by the tribal government instead of the form provided by the secretary of state, so long as the form is consistent with this section and North Dakota Century Code section 16.1-01-04.1.

The secretary of state shall provide a form that may be used by a federal, state, or local government to provide supplemental documentation to an individual for the purpose of voting.

History: Effective February 5, 2020.

General Authority: NDCC 16.1-02-11

Law Implemented: NDCC 16.1-01-04.1

72-06-03-05. Tribal members voting a set aside ballot.

In counties that include tribal reservation land, immediately after the election, the secretary of state shall send to the applicable tribal government by electronic mail the names of all individuals whose marked ballot was set aside because the identification provided did not contain current information. Prior to the meeting of the county canvassing board occurring on the sixth day after the election, the tribal government may respond to the secretary of state with correct information that was missing or not current for any tribal member included in the list of individuals who marked a set aside ballot. The secretary of state shall provide a form for the tribal government to use to respond with correct or missing information. A tribal government may use any form prescribed by the tribal government instead of the form provided by the secretary of state, so long as the form is consistent with this section and North Dakota Century Code section 16.1-01-04.1.

Upon receipt of the information provided by the tribal government, the secretary of state shall update the central voter file with the correct or current information and shall notify the county auditor of the county in which the tribal member resides that the set aside ballot for the member must be counted at the meeting of the canvassing board.

History: Effective February 5, 2020.

General Authority: NDCC 16.1-02-11

Law Implemented: NDCC 16.1-01-04.1

TITLE 74
SEED COMMISSION

JULY 2020

ARTICLE 74-03 SEED CERTIFICATION STANDARDS

Chapter	
74-03-00.1	Definitions
74-03-01	General Seed Certification Requirements
74-03-02	Specific Crop Requirements - Small Grains
74-03-03	Specific Crop Requirements - Alfalfa (Nonhybrid) [Repealed]
74-03-04	Specific Crop Requirements - Birdsfoot Trefoil [Repealed]
74-03-05	Specific Crop Requirements - Red Clover [Repealed]
74-03-06	Specific Crop Requirements - Sweetclover [Repealed]
74-03-07	Specific Crop Requirements - Grasses
74-03-07.1	Specific Crop Requirements - Buckwheat
74-03-08	Specific Crop Requirements - Millet - Self-Pollinating
74-03-09	Specific Crop Requirements - Mustard, Crambe, and Rape (Nonhybrid)
74-03-09.1	Specific Crop Requirements - Hybrid Canola and Rapeseed
74-03-10	Specific Crop Requirements - Safflower
74-03-11	Specific Crop Requirements - Sunflower
74-03-12	Specific Crop Requirements - Soybeans, Chickpeas, and Lentils
74-03-12.1	Specific Crop Requirements - Field Peas
74-03-13	Specific Crop Requirements - Dry Field Beans
74-03-14	Specific Crop Requirements - Hybrid Wheat <u>and Hybrid Rye</u>
74-03-15	Specific Crop Requirements - Flax
74-03-16	Specific Crop Requirements - Industrial Hemp
<u>74-03-17</u>	<u>Specific Crop Requirements - Faba Beans</u>

CHAPTER 74-03-01

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, payment of past-due accounts, and proof of seed eligibility, must be received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications for grass seed must be received by May first to avoid late penalty. Applications for hybrid wheat and industrial hemp must be received by June first to avoid late penalty. Applications for millet and buckwheat must be received by July fifteenth to avoid late penalty. Applications for soybeans requiring only a single inspection (preharvest) must be received by August first to avoid late penalty. In case of an emergency or unusual circumstances due to

weather or crop conditions, the deadline may be extended at the discretion of the seed commissioner. In such an event, late application penalties may be waived.

2. Information required on application. The application shall be completed by the applicant and returned to the seed department. All questions must be answered completely and correctly. The location of the farm and field, including the legal description, shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. Farm service agency field maps or equivalent must be provided by the applicant. If the seed is the grower's own seed, sufficient evidence must be provided to the department to verify eligibility. If the seed is purchased, an official certified seed tag or bulk certificates must accompany the application.
3. Roguing and spraying fields. Roguing is essential to maintain the purity of varieties and high standards of certified seed. Roguing fields prior to inspection is recommended to remove undesirable plants from fields. Plants that should be removed include off-type plants, other crop plants, prohibited and restricted noxious weeds, and other impurities which may be growing in the field.

Roguing is usually done by pulling off-types or other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, fertile off-types and undesirable plants should be removed before pollen is shed. Sterile off-types may be removed any time prior to the final inspection.

Whenever practical and advisable, seed fields should be sprayed with pesticides according to the manufacturer's label to control pests. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. Weeds and diseases.
 - a. Prohibited noxious weeds under North Dakota seed laws and rules are leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, hoary cress (perennial peppergrass), absinth wormwood, musk thistle, spotted knapweed, ~~and~~ yellow starthistle, and Palmer amaranth.
 - b. Restricted noxious weeds under North Dakota seed laws and rules are dodder species, hedge bindweed (wild morning glory), wild oats, and quackgrass.
 - c. A field may be rejected if it is the field inspector's opinion that the amount and kind of weeds present make it difficult to conduct the inspection, or the field condition is such that the quality of the cleaned seed may be questionable.
 - d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.
 - e. Diseases not governed by specific crop standards may be cause for rejection if it is the field inspector's opinion that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.
5. Cancellation of field inspection. An application may be canceled by the applicant before the field inspection is completed. The application fee minus an administrative fee will be refunded to the applicant. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection has occurred. Refunds will not be made after the field is inspected or because the field has been rejected.

6. Appeal. Reinspection of rejected fields may be considered, provided the application for appeal allows a reasonable amount of time for reinspection prior to harvest. A fee for reinspection may be assessed.
7. The variety name stated on the application will be standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the applicant will be presumed correct if the documentation provided is valid.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2018; [July 1, 2020](#).

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-53-37, 4.1-53-42, 4.1-53-59

74-03-01-11. Seed conditioning, sampling, and laboratory inspection.

1. **Identification in storage.** Field-inspected seed must be identified at all times. Identification must be traceable to field inspection numbers from the crop year in which the seed was produced. Conditioned seed in storage must be identified by kind, variety, class, and lot number displayed on the bin or storage container.
2. **Preconditioned sample testing.** To hasten labeling or determine the quality of seed which has passed field inspection prior to conditioning, a representative sample of seed may be submitted to the state seed department for the purpose of germination and disease testing. The sample should be cleaned on a small mill or hand sieve to approximate as nearly as possible the quality of the entire lot after conditioning.

Results of germination and disease tests conducted on preconditioned samples may be used for final certification purposes. A labeler may request new tests for labeling purposes after the seed lot is conditioned. Fragile crops such as soybeans, field beans, lentils, chickpeas, and field peas must be tested for germination after the final conditioning of the seed lot to assure correctness of label claims. The labeler is responsible in all cases for information stated on seed labels.

3. **Conditioning.** All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class. Field-inspected seed may be conditioned either by the grower or by an approved seed conditioner.
 - a. Conditioning by seed grower.
 - (1) A seed grower does not need an approved conditioning facility permit if the grower conditions the grower's own seed on the grower's premises with the grower's equipment.
 - (2) The seed grower must complete a sampler's report in its entirety, attach the report to a two-pound [.907-kilogram] sample that is representative of the entire seed lot, and deliver to the state seed department for analysis.
 - b. Conditioning by an approved facility.
 - (1) To be eligible for final certification, field-inspected seed shall be conditioned by a facility approved by the seed department. Seed conditioned at an unapproved facility will be ineligible for final certification.
 - (2) If ownership of the seed lot is transferred to a different individual or entity, the grower must complete and sign a grower's declaration. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner.

- (3) While conditioning, the seed lot must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.
4. **Sampling procedures.** Representative samples of seed for testing and analysis must be collected during or after conditioning in accordance with sampling procedures outlined in the current association of official seed certifying agencies operational procedures.
 - a. All seed lots eligible for final certification shall be sampled during conditioning as follows:
 - (1) Portions of conditioned seed may be drawn by hand as seed is conditioned to form a composite, representative sample for a seed lot; and
 - (2) Automatic mechanical devices may be used to continually or intermittently draw representative samples as a seed lot is conditioned.
 - b. Specific instructions to samplers are found on the reverse side of the ~~samplers~~[sampler's report](#).
5. **Maximum lot size and numbering.**
 - a. The maximum lot size for bagged seed is five thousand bushels [17619.54 dekaliters] except for small seeded legumes and grasses which is twenty-two thousand five hundred pounds [10000 kilograms]. Bulk seed lots do not have a maximum size limit except bin capacity. Each bin is considered a separate seed lot. For all crops, one sample for each lot is required. The entire lot must be certified at the time final certification is completed.
 - b. The lot number shall be designated by the labeler. The lot number of the seed planted may not be used as the new lot number for the seed being certified during the current crop year.
6. **Commingling (mixing) of inspected seed fields.** Seed of the same kind and variety from different fields that pass field inspection may be commingled if the seed is of the same class and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only.
7. **Commingling carryover certified seed lots.** Carryover seed from certified lots may be commingled if the seed is of the same variety, class, and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only. A new germination test is required for labeling. Germination tests should be done on each lot prior to commingling to ensure none of the lots have gone out of condition.
8. The state seed department may resample any lot of seed before final certification or after the seed is labeled.
9. **Official samples.** At the request of a customer, an official sample may be collected by a representative of the seed department, with expenses incurred by the customer. The seed department shall determine the appropriate collection method and sample size. Sampling bulk seed in bins requires that a minimal amount of seed is withdrawn from the bin. The amount shall be determined by the quantity of seed in the lot, but shall be no less than five percent of the total lot size. Test results from official samples shall supersede all previous test results and shall be final.
10. **Laboratory analysis.**
 - a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in

accordance with the rules of the association of official seed analysts (AOSA). In certain cases when time constraints are critical to the efficient movement of certified seed, the commissioner may accept germination or other test results from an approved laboratory, through the certification agency of the state of origin of the seed.

- b. If more than one sample of seed from the same lot is tested without additional conditioning, an average shall be taken of all purity tests conducted. Results from the most recent germination or disease test shall be used as the final result.
- c. Seed from certain classes or kinds, or both, may be subject to variety identification analysis at the discretion of the department, with testing fees payable by the grower or labeler.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2018.; [July 1, 2020](#)

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-53-46

74-03-01-12. Labeling.

All classes of certified seed, when offered for sale, shall have an official certification label affixed to each container clearly identifying the certification agency, the lot number or other identification, variety name and kind, and class of seed. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.

1. Records. Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled. All records pertaining to the lot involved must be accessible for inspection by the commissioner at any time during customary business hours. Records shall include:
 - a. Quantity of seed grown and conditioned or purchased for bulk sale.
 - b. Quantity of bulk certified seed sold by variety and lot number.
 - c. A current inventory of each variety of seed available for sale.
 - d. Consult Federal Seed Act regulations part 201 for recordkeeping requirements for seed in interstate commerce.
2. Samples. It is the initial labeler's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by kind, variety, class, and lot number of each lot of certified seed sold, whether bagged or in bulk, for a period of one year after the final disposition of the seed lot.
3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law, and any such disclaimer of vendor's express or implied warranty is invalid.
4. Bagged seed.
 - a. All bagged seed represented or sold as foundation, registered, or certified must be bagged in new bags and the official certification tag properly affixed on the bag. Certification tags are void if improperly used or not attached to the bag. Containers or tote bags larger than one hundred sixty pounds [72.77 kilograms] may be considered bulk seed.

- b. The use of two tags, the official certification tag and a separate analysis tag, on foundation, registered, or certified seed is optional.
 - c. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.
 - d. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.
5. Bulk seed. In the case of seed sold in bulk, the bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.
- a. Foundation and registered class seed may be sold in bulk only by the applicant producer, or by an approved conditioner.
 - b. Certified class seed may be sold in bulk by the applicant producer, an approved conditioner, or an approved bulk retail facility.
 - c. Approved bulk retail facilities may be allowed to handle bulk registered seed on a case-by-case basis only when authorized by the state seed department. If authorized by the seed department, the bulk retailer must designate which bins will be used for registered seed.
 - d. Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning facility or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.
 - e. Offsite bins or satellite bin locations shall be managed in the same manner as those at an approved facility. Bins shall be listed on a separate bin list registered under the name of an approved facility. All satellite locations shall be inspected annually by the seed department.
 - f. Handling bulk certified seed:
 - (1) A separate storage bin must be available for each lot that will be sold in bulk. Each bin shall be considered a separate lot of seed and shall be labeled accordingly.
 - (2) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.
 - (3) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.
 - (4) All augers used to convey seed must be reversible.
 - (5) All bins must be clearly and prominently marked to show kind, variety, class, and lot number.
 - (6) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin, or to allow for aeration.
 - g. A maximum of two physical transfers are permitted after final certification.
 - h. It is the seller's responsibility to:
 - (1) Handle seed in a manner to prevent mixtures and contamination.

- (2) Supply seed that is representative of the seed tested and approved for certification.
 - (3) Ensure all bins, augers, conveyors, and other equipment are adequately cleaned before handling certified seed.
 - (4) Determine that the vehicle receiving bulk certified seed has been cleaned prior to receiving the seed. If it is not clean, this is to be noted on the bill of sale or transfer certificate.
 - (5) Provide to the purchaser a bulk certificate for each load of bulk certified seed at the time of delivery.
 - (6) Ensure that the conditioned lot is not moved from the premises of the approved conditioning facility or labeler's facility until the sample has been tested by the state seed department laboratory and shows that the lot is eligible for certification.
- i. It is the buyer's responsibility to:
- (1) Obtain a bulk certificate from the seller for each load of bulk certified seed at the time of delivery.
 - (2) Provide a clean vehicle or container in which to load seed.
 - (3) Maintain purity of the seed after it has been loaded into the buyer's vehicle.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; [July 1, 2020](#).

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-53-12, 4.1-53-13, 4.1-53-39

74-03-01-14. Carryover seed.

~~1. **Unconditioned carryover.** All unconditioned carryover seed eligible for certification must be reported to the state seed department. Failure to report will disqualify the seed for certification.~~

~~2. **Certified carryover.**~~

~~a. **Bagged seed.** All carryover seed must be retested for germination before new certified tags will be issued by the state seed department.~~

~~b. **Bulk seed.** All carryover bulk seed must be retested for germination before new bulk certificates will be issued. Carryover bulk seed cannot be recertified in bags unless a new sample is submitted for purity and germination analysis.~~

All carryover seed must be retested for germination before new certified seed labels will be issued by the state seed department.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012; [July 1, 2020](#).

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-53-42

CHAPTER 74-03-02

74-03-02-04. Seed standards (wheat - oats - barley - rye - triticale).

Seed count required ~~on wheat, oats, barley, and durum.~~

Variety identification test required for hard red spring wheat and barley.

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum) *	99.0 percent	99.0 percent	99.0 percent
Total weed seeds (maximum)	2 per pound	5 per pound	10 per pound
Other varieties **	1 per 2 pounds	1 per pound	3 per pound
Other crop seeds (maximum)	1 per 2 pounds	1 per pound	3 per pound
Inert matter (maximum) ***	1.0 percent	1.0 percent	1.0 percent
Prohibited noxious weed seeds +	none	none	none
Objectionable weed seeds (maximum) ++	1 per 2 pounds	1 per 2 pounds	1 per pound
Germination +++	85.0 percent	85.0 percent	85.0 percent

*The standard for durum, triticale, and rye shall be 98.0 percent minimum.

**Other varieties shall not include variants characteristic of the variety. White wheat must be tested for red wheat contaminants.

***For all crops foreign matter other than broken seed shall not exceed 0.2 percent. Durum, triticale, and rye may contain 2.0 percent maximum inert matter.

+Including the seeds of quackgrass.

++Objectionable weed seeds shall include the following: dodder, wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), falseflax, and dragonhead.

+++Winter wheat, durum, triticale, and rye minimum 80.0 percent.

Note: A barley labeler is responsible for having a loose smut test, by an official laboratory, on the harvested seed of each field of barley. If seed from more than one field is blended without having a test for each field, a loose smut test must be made on each seed lot or subplot. The percentage of loose smut will be printed on the certification certificate or label.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012; July 1, 2018; July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

CHAPTER 74-03-09

74-03-09-03. Field standards.

1. General.

- a. Isolation. A field producing any class of certified seed must have the minimum isolation distance from fields of any other variety of the same kind, or from a noncertified crop of the same variety as follows:

- (1) Producing foundation seed ~~—one thousand three hundred twenty feet [402.34 meters]. All foundation fields of mustard, canola, or rape must be isolated by three hundred thirty feet [100.58 meters] from fields of the other kind (rape from mustard or canola; mustard from rape or canola; or canola from rape or mustard)~~

(a) Crambe - Six hundred sixty feet. [201.17]

(b) Mustard - One thousand three hundred twenty feet. [402.34]

(c) Rapeseed - Six hundred sixty feet . [201.17]

- (2) Producing registered crambe seed - six hundred sixty feet [201.17 meters].

- (3) Producing certified seed ~~—six hundred sixty feet [201.17 meters]~~

(a) Crambe - Six hundred sixty feet. [201.17]

(b) Mustard - Six hundred sixty feet. [201.17]

(c) Rapeseed - Three hundred thirty feet [100.58].

(d) Required isolation between classes of the same variety - ten feet [3.05 meters].

- b. Unit of certification. The field is the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.

2. Specific field standards.

Factor	Maximum Permitted in Each Class		
	Foundation	Registered Crambe Only	Certified
Other varieties *	1:2,000	1:2,000	1:500
Inseparable other crops	1:2,000	1:2,000	1:500

*Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

History: Amended effective May 1, 1986; December 18, 1989; September 1, 2002; January 2, 2006; [July 1, 2020](#).

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

CHAPTER 74-03-11

74-03-11-03. Field standards.

Factor	Open-Pollinated* Varieties	Seed-Parent	Pollen-Parent	
	Foundation, Registered, Certified	Foundation	Certified	
Factor	Open Pollinated Varieties	A, B, or R	Hybrid Production	
			Seed Parent	Pollen Parent
Pollen shedding female plants (Maximum)		1:1,000*	4 5:1,000	
Off-types other than pollen shedding- female plants (maximum) <u>Branched wild-types</u>		1:5,000 <u>1,000</u>	1:5,000 <u>1,000</u>	1:5,000 <u>1,000</u>
Isolation allowances (maximum) per plants in the production field <u>Purple plants</u> **	1:5,000	1:5,000 <u>1,000</u>	1:5,000 <u>1,000</u>	1:5,000 <u>1,000</u>
<u>White seeded plants</u>		<u>1:1,000</u>	<u>1:1,000</u>	<u>1:1,000</u>
Total including above (maximum)	5:1,000	4 4:1,000	4 4:1,000	1:2,000 <u>4:1,000</u>
Isolation (minimum) **	5,280 feet	5,280 feet	5,280 feet	5,280 feet
Corn plants bearing seed	none	none	none	none

*To include not more than one plant per 5,000 plants of the following types: wild type branching, purple, white seeded. Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety. Standard applies only to A-line.

**Must be isolated from other varieties, strains, hybrids, volunteer sunflower, noncertified crops of the same variety, and hybrid and wild Helianthus ~~annuus~~ species.

History: Amended effective May 1, 1986; May 1, 1988; January 2, 2006; July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

CHAPTER 74-03-14
SPECIFIC CROP REQUIREMENTS - HYBRID WHEAT AND HYBRID RYE

Section

74-03-14-01	General Requirements
74-03-14-02	Land Requirements
74-03-14-03	Field Inspection
74-03-14-04	Field Standards
74-03-14-05	Seed Standards

74-03-14-01. General requirements.

The following genetic standards are applicable for the production of parental lines and hybrid hybrids of wheat and rye produced by commingling a cytoplasmic male-sterile seed parent and a fertility restorer line.

1. **Eligibility requirements for varieties.** Standards applicable to wheat and rye varieties apply to the production of pollinator lines.
2. **Definition of parental types.**
 - a. **Maintainer (B-line).** A line with normal fertile cytoplasm which is used as a pollinator to increase the seed parent.
 - b. **Seed parent (A-line).** A cytoplasmic male-sterile line, which is genetically identical to the maintainer line that when pollinated by a restorer, produces hybrid seed.
 - c. **Restorer (R-line).** Any male fertile line possessing nuclear restoration genes used as a pollinator in the production of commercial hybrid seed.
3. **Eligible seed classes.**
 - a. Only the certified class is recognized in the production of commercial hybrid seed. A commercial hybrid is planted for any use except for seed production. To be certified, a commercial hybrid must be produced from foundation class seed stocks. These seed stocks must consist of male steriles, inbred lines, and/or hybrids.
 - b. Only the foundation class is recognized for parental lines.

History: Effective July 1, 2018; amended effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14-03. Field inspection.

Fields for the production of parental lines utilized in hybrid wheat and hybrid rye production must be inspected as follows. Roguing to remove undesirable plants must be done prior to field inspection. Rogued plants must be removed from the field.

1. AxB production. Seed parents must be inspected three times. The first inspection must occur after heading but before anthesis to check for off-type plants. The second and third inspections must be during anthesis to check for shadders in the seed parent, the presence of which must be communicated immediately with the seed producer to allow for roguing.
2. Maintainers and restorers. Male lines must be inspected at least once for purity after the crop is fully headed.
3. Commercial hybrid production fields must be inspected at least once.

History: Effective July 1, 2018; [amended effective July 1, 2020](#).

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14-04. Field standards.

1. Isolation.

- a. Seed parent increases (AxB). Fields or parts of fields acceptable for production of seed parents to be used for the production of commercial hybrid seed must be so located that the seed parent is not less than two thousand six hundred forty feet [804.67 meters] [for wheat and three thousand two hundred eighty feet \[1000 meters\] for rye](#) from fields of other kinds or varieties that could provide a source of contamination, or from fields of the same variety that do not meet varietal purity requirements for certification. The A-line and B-line must be separated by an unplanted strip of ground adequate to prevent mechanical mixture.
- b. ~~Restorer~~[Maintainer and restorer](#) increases. [Fields or parts of fields acceptable for production of pollinator lines must be so located that the line is not less than thirty feet \[9 meters\] for wheat and six hundred sixty feet \[200 meters\] for rye from fields of other kinds or varieties which could provide a source of contamination, or from fields of the same variety that do not meet varietal purity requirements for certification.](#) Prior to inspection, the field must be isolated from inseparable crops by a strip at least five feet wide to prevent mechanical contamination.
- c. Commercial hybrids. Fields or parts of fields acceptable for production of commercial hybrid seed must be no less than three hundred thirty feet [100.58 meters] [for wheat and one thousand six hundred forty feet \[500 meters\] for rye](#) from fields of other kinds or varieties that would provide a source of contamination, or from fields of the same variety that do not meet varietal purity requirements for certification.

2. Specific field standards.

Factor	A-Line Foundation	B- and R-Lines Foundation	Commercial Hybrid Certified
Pollen shedders	1:3,000	N/A	N/A
Other varieties *	1:3,000	1:3,000	1:3,000
Inseparable other crops	1:30,000	1:30,000	1:5,000
Prohibited noxious weed seeds **	none	none	none

*Other varieties include plants that can be differentiated from the variety being inspected, but may not include variants that are characteristic of the variety.

**The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Effective July 1, 2018; [amended effective July 1, 2020](#).

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-14-05. Seed standards.

A variety identification test is required for A-, B-, and R-lines [of wheat](#). A hybridity test is required on hybrid seed. A seed count is required on all ~~lines~~[hybrids](#).

Factor	Standards for Each Class	
	A-, B-, and R-Lines	Commercial Hybrid
Pure seed (minimum)	98.0 percent	98.0 percent
Hybridity (minimum) *	N/A	75.0 percent
Total weed seeds (maximum)	0.10 percent	0.10 percent
Other varieties **	0.005 percent	0.05 percent
Other crop seeds (maximum)	0.01 percent	0.08 percent
Inert matter (maximum) ***	2.0 percent	2.0 percent
Prohibited noxious weed seeds	none	none
Germination	80.0 percent	80.0 percent

*Hybridity will be determined by ~~an acceptable~~ method ~~of acceptable accuracy that can be reproduced by a certifying agency. The completed~~ and test ~~must~~ results shall be submitted to the agency with a declaration of the hybridity prior to final certification of each lot of spring cereals and within one hundred sixty days of harvest for winter cereals.

**Other varieties include plants that can be differentiated from the variety being inspected, but may not include variants that are characteristic of the variety.

***Inert matter may not include more than 0.5 percent of material other than seed fragments of the variety under consideration.

History: Effective July 1, 2018; amended effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

CHAPTER 74-03-16
SPECIFIC CROP REQUIREMENTS - ~~INDUSTRIAL~~ HEMP

Section

74-03-16-01	General Requirements
74-03-16-02	Land Requirements
74-03-16-03	Field Inspection
74-03-16-04	Field Standards
74-03-16-05	Seed Standards

74-03-16-01. General requirements.

All production of ~~industrial~~ hemp ~~crops~~, as defined in North Dakota Century Code section 4.1-18.1-01 is subject to license application approval that may be required by regulatory authorities. Only growers who possess a current license with the North Dakota department of agriculture are eligible to produce certified seed. Only varieties of ~~industrial~~ hemp approved by regulatory authorities for seed production and which meet Federal Seed Act eligibility requirements are eligible for certification. Growers may be required by regulatory agencies to obtain tetrahydrocannabinol test results according to applicable regulations. Growers may be required to submit test results to the seed certifying agency before labels are issued. Upon meeting final certification requirements, eligible seed will be labeled in the licensee's name only.

History: Effective July 1, 2018; amended effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-16-02. Land requirements.

A crop of foundation or registered class ~~industrial~~ hemp is not eligible for certification if planted on land on which the same kind of crop was grown the previous three years unless the previous crop was the same variety and passed field inspection for certification. A crop for certified class is not eligible for certification if planted on land on which the same kind of crop was grown the previous two years unless the previous crop was the same variety and passed field inspection for certification.

History: Effective July 1, 2018; amended effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-16-03. Field inspection.

It is the grower's responsibility to ensure fields are inspected prior to ~~swathing or~~ harvesting. A field harvested before inspection is not eligible for certification. All fields must be inspected at least once before harvest at a stage of growth when varietal purity is best determined. One inspection is required for registered and certified seed fields of dioecious varieties. Two inspections are required for all classes of monoecious varieties and foundation seed fields of dioecious varieties.

History: Effective July 1, 2018; amended effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-16-04. Field standards.

1. Isolation.

- a. Prior to flowering and inspection, the field must be isolated from fields of any other variety or fields of the same variety not meeting genetic purity requirements for certification.

- b. The minimum isolation distances required between inspected ~~industrial~~ hemp and other hemp crops must be maintained as specified in the following table. There must be no hemp plants within three hundred feet [91.44 meters] of a seed field and no more than four plants per acre outside three hundred feet [91.44 meters]. ~~Industrial hemp~~ Hemp crops must be isolated from other inseparable crops by a minimum of ten feet.

Other Hemp Crops	Dioecious Types		Monoecious Types and Hybrids	
	Foundation-Registered	Certified	Foundation Registered	Certified
Different varieties of industrial hemp or noncertified crop of same variety	16,150 feet	3,230 feet	N/A	N/A
Lower certified class of seed crop of same variety	6,460 feet	646 feet	N/A	N/A
hemp or noncertified crop of the same kind industrial Dioecious variety of	N/A	N/A	16,150 feet	3,230 feet
hemp (monoecious or female hybrid) industrial Different varieties of the same type of	N/A	N/A	6,460 feet	646 feet
Lower certified class of seed crop of same variety	N/A	N/A	3,230 feet	646 feet

Inspected Crop	Other Crops	Isolation Distance Required (feet)
<u>Dioecious type foundation</u>	• <u>Different varieties of hemp</u>	<u>15,748</u>
	• <u>Noncertified crop of hemp</u>	
	• <u>Lower certified class of seed crop of same variety</u>	<u>6,460</u>
<u>Dioecious type registered</u>	• <u>Same class of certified seed crop of same variety</u>	<u>10</u>
	• <u>Different varieties of hemp</u>	<u>15,748</u>
	• <u>Noncertified crop of hemp</u>	
<u>Dioecious type certified</u>	• <u>Seed crop of same variety that meets certified standards for varietal purity</u>	<u>5,249</u>
	• <u>Seed crop of same variety that meets registered standards for varietal purity</u>	<u>3</u>
	• <u>Different varieties of hemp</u>	<u>2,624</u>
<u>Monoecious type foundation</u>	• <u>Noncertified crop of hemp</u>	
	• <u>Planted with certified seed of the same variety that meets certified standards for varietal purity</u>	<u>656</u>
	• <u>Seed crop of same variety that meets certified standards for varietal purity</u>	<u>3</u>
<u>Monoecious type registered</u>	• <u>Dioecious varieties of hemp</u>	<u>15,748</u>
	• <u>Noncertified crop of hemp</u>	
	• <u>Other monoecious varieties</u>	<u>9,690</u>
<u>Monoecious type certified</u>	• <u>Lower certified class of seed crop of same variety</u>	<u>16</u>
	• <u>Same class of certified seed crop of same variety</u>	
	• <u>Dioecious varieties of hemp</u>	<u>15,748</u>
<u>Monoecious type foundation</u>	• <u>Noncertified crop of hemp</u>	
	• <u>Different varieties of the same type of hemp (monoecious or female hybrid)</u>	<u>6,460</u>
	• <u>Seed crop of same variety that meets certified standards</u>	<u>3,320</u>

	for varietal purity	
	• <u>Seed crop of same variety that meets registered standards for varietal purity</u>	3
<u>Monoecious type certified</u>	• <u>Dioecious varieties of hemp</u> • <u>Noncertified crop of hemp</u>	3,230
	• <u>Different varieties of the same type of hemp (monoecious or female hybrid)</u> • <u>Planted with certified seed of the same variety that meets certified standards for varietal purity</u>	656
	• <u>Seed crop of same variety that meets certified standards for varietal purity</u>	3

2. Specific field standards.

- a. Roguing to remove undesirable plants must be done before field inspection. Rogued plants must be removed from the field to be harvested.
- b. Any combination of impurities may be reason for failing an inspection. Unless otherwise specified by the breeder, an industrial hemp crop for certification must not exceed the limits specified in the following table. Impurities may include harmful contaminants (species capable of cross pollinating with the inspected variety), plants of other varieties or distinct types foreign to the variety being inspected, weeds, or other inseparable crops.
- c. The table indicates the maximum number of impurities permitted in approximately ten thousand plants of the inspected crop.

Factor	Dioecious Types		Monoecious Types		Monoecious-Types and Hybrids
	Foundation	Registered Certified	Foundation	Registered	Certified
"Too-male" monoecious-plants	N/A	N/A	500	1,000	N/A
Dioecious male-plants-shedding-pollen	N/A	N/A	1	2	100
Other-impurities	3	10	3	10	10

<u>Maximum Impurity Standards per Ten Thousand Plants in Hemp Seed Crops</u>		
	<u>Maximum Number of Dioecious Male Plants Shedding Pollen</u>	<u>Maximum Number of Off-Types or Other Varieties</u>
<u>Dioecious type foundation</u>	-	3
<u>Dioecious type registered</u>	-	10
<u>Dioecious type certified</u>	-	20
<u>Monoecious type foundation</u>	1	3
<u>Monoecious type registered</u>	2	10
<u>Monoecious type certified</u>	100	20

History: Effective July 1, 2018; amended effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

CHAPTER 74-03-17
SPECIFIC CROP REQUIREMENTS - FABA BEANS

Section

<u>74-03-17-01</u>	<u>Land Requirements</u>
<u>74-03-17-02</u>	<u>Field Inspection</u>
<u>74-03-17-03</u>	<u>Field Standards</u>
<u>74-03-17-04</u>	<u>Seed Standards</u>

74-03-17-01. Land requirements.

A crop of faba bean is not eligible for certification if planted on land on which the same kind was grown the year previous unless the previous crop was the same variety and was inspected for certification.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-17-02. Field inspection.

Field inspection must be made when the crop is flowering.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-17-03. Field standards.

1. **Isolation.** Prior to inspection, a field must be isolated from inseparable crops by a fence row, natural boundary, or by a strip of at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped. A field must be isolated at least thirty feet [10 meters] from different varieties of noncertified varieties of faba bean

2. **Specific field standards.**

<u>Factor</u>	<u>Foundation</u>	<u>Registered</u>	<u>Certified</u>
<u>Other varieties*</u>	<u>1:2,000</u>	<u>1:1,000</u>	<u>1:500</u>
<u>Inseparable other crops</u>	<u>none</u>	<u>1:2,000</u>	<u>1:1,000</u>
<u>Prohibited noxious weeds**</u>	<u>none</u>	<u>none</u>	<u>none</u>

*Other varieties include plants that can be differentiated from the variety being inspected, but may not include variants that are characteristic of the variety.

**The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-03-17-04. Seed standards.

A seed count is required.

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	98.0 percent	98.0 percent	98.0 percent
Total weed seeds (maximum)	none	1 per pound	2 per pound
Other varieties*	1 per 2 pounds	1 per pound	2 per pound
Other crop seeds (maximum)	none	1 per pound	2 per pound
Inert matter (maximum)**	2.0 percent	2.0 percent	2.0 percent
Prohibited noxious weed seeds	none	none	none
Objectionable weed seeds	none	none	none
Germination	85.0 percent	85.0 percent	85.0 percent

*Other varieties include plants that can be differentiated from the variety being inspected, but may not include variants that are characteristic of the variety.

**Objectionable weed seeds include those of buckhorn, dodder, hedge bindweed (wild morning glory), hoary alyssum, horsetail, quackgrass, wild oats, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

History: Effective July 1, 2020.

General Authority: NDCC 4.1-52-10

Law Implemented: NDCC 4.1-52-10, 4.1-53-42

CHAPTER 74-04-01

74-04-01-02. General requirements and responsibilities.

1. Participation and responsibility.
 - a. Participation in this seed potato program is voluntary and may be withdrawn prior to the first inspection.
 - b. Responsibilities.
 - (1) Seed department responsibilities. The inspections, approvals, certification, and production of these rules and regulations will be done by the state seed department.
 - (2) Applicants' responsibilities. The farming, sanitation practices, storing, and packing will be the grower's responsibility. It is the responsibility of the applicant to maintain genetic purity and identity at all stages of certification, including planting, harvesting, storing, and handling. Evidence that any lot of seed has not been protected from contamination that might affect genetic purity or is not properly identified shall be cause for possible rejection of certification.
2. General requirements.
 - a. Potatoes to be eligible for the program shall have been in a certification program and winter tested for eligibility.
 - b. Fields will pass two or more inspections given by visual examination of a representative sample of the plants which method and size of sample will be determined by the state seed department.
 - c. Fields passing inspection will be stored in a seed warehouse and sorted to grade at shipping time.
 - d. Responsibility for the quality of work done in sorting the potatoes falls upon the grower or a thoroughly qualified agent authorized by the grower.
 - e. Requirements for certification are not complete on any lot of eligible potatoes until properly labeled as described in this chapter ~~and an official seed grade inspection certificate has been issued~~. Official labels will be provided to the grower by the state seed department in hard copy or electronic form. Official seed grade inspections are compulsory for seed shipped out of state. Grade inspection is voluntary for intrastate shipments. For those shipments that are not inspected, or that fail to meet grade standards described in section 74-04-01-11, the label must state "no grade".
 - f. The responsibility for properly and accurately labeling foundation or certified seed rests with the grower of the seed. The labels will be issued to the purchaser only on order or authorization from the grower, who must provide to the purchaser a proper and accurate label for each container or load of seed at the time of delivery. Labels must not be applied to stock other than that indicated on the tags or bulk certificates. Bulk shipments, by truck or railcar, when thoroughly disinfected, may be considered the container.
 - g. The seed label must contain the following information:
 - (1) Year in which the crop was produced.
 - (2) Grower/labeler's name.
 - (3) Variety.

- (4) ~~Generation~~Field year.
 - (5) Class.
 - (6) Certification or application number of the seed lot.
 - (7) Total amount in container represented by cwt.
- h. Resorting or regrading. If a lot of potatoes fails to meet certified seed grade requirement upon inspection, they are to be reconditioned to meet the requirement or the official labels must be removed.
 - i. Reconditioning while in transit. In the case of any circumstance making it essential to recondition seed in transit, permission must be obtained from the state seed department.
 - j. Latent virus testing. Serological testing for latent viruses shall be voluntary and a requirement for only virus-tested seed. Virus-tested seed meeting established tolerances may be indicated on the label.
 - k. Upon the discretion of the state seed department, potato seed lots originating from out of state may be subjected to a laboratory test, by a seed department-approved laboratory, for the detection of seedborne pathogens. Eligibility for recertification of any seed lot so tested must be based on that laboratory test. Additional documentation, including health certificates or summer or winter, or both, field readings, may be required by the seed department prior to acceptance for recertification in this state.
 - l. Failure to comply with any of the requirements of this chapter may be cause for rejection or cancellation of the lot or the certification of any seed as seed potatoes.
- 3. No person may disclaim responsibility of the vendor of the seed for the data or information on the label required by law and any such disclaimer of vendor's express or implied warranty is invalid.
 - 4. Violations. The state law specifically states the use of the term "certified" or the term "registered" or any term or terms conveying a meaning substantially equivalent to the meaning of any said terms, either orally or in writing, printing, marking, or otherwise in reference to or in connection with or in advertising or characterizing or labeling seed potatoes or the containers thereof is prohibited, unless such potatoes shall have been duly inspected and certified pursuant to the provisions of the law. ~~Any violation of this law and any person on conviction thereof, shall be fined not more than one hundred dollars and cost for first offense and not more than five hundred dollars and costs of prosecution for subsequent offenses.~~

History: Amended effective December 1, 1981; June 1, 1992; January 2, 2006; July 1, 2007; October 1, 2012; July 1, 2018; July 1, 2020.

General Authority: NDCC 28-32

Law Implemented: NDCC 4.1-55-02

74-04-01-04. Application fees and restrictions.

- 1. Application for field inspection must be received in the state seed department, ~~university station~~1313 18th Street North, P.O. Box 5257, Fargo, North Dakota, not later than June fifteenth. There is a three dollar per acre [.40 hectare] cash penalty for later applications.
- 2. At least one-half the fees and all due accounts must accompany the applications.
- 3. Applications are subject to cancellation in the case of crop failure or other valid reason and the application fee, minus a cancellation fee will be returned if the request reaches the state seed

department before the inspector arrives in the general locality of the field. However, in such a case, the crop must be plowed under or destroyed so as not to create a disease hazard.

4. Separate application forms are required for latent virus testing.
5. Loss by down outs, if over twenty-five percent of the field, will be allowed after the first inspection only. No adjustments will be made thereafter.
6. Fee schedules for field inspection, grade inspection, latent virus testing, cancellation fees, and late penalties are subject to change and available at the state seed department.
7. Prompt payment of all fees will be required at all times.
8. Additional testing costs such as laboratory tests will be assessed at costs to the grower.

History: Amended effective December 1, 1981; December 1, 1987; June 1, 1992; September 1, 1997; September 1, 2002; July 1, 2018; July 1, 2020.

General Authority: NDCC 28-32

Law Implemented: NDCC 4.1-55-02

74-04-01-07. Seed classification and limited generation.

1. All seed potatoes must be limited to seven years of reproduction in the field. Seed lots may be reproduced beyond this limit with prior approval of the state seed department providing the seed lot has been winter tested and eligible for recertification.
2. Prenuclear seed stocks must originate from tissue-culture derived plantlets, minitubers, microtubers, or pathogen-tested stem cuttings. Experimental breeding selections shall originate from pathogen-tested material. The first year of reproduction of these stocks will be regarded as nuclear seed stock ~~(generation zero). Nuclear seed (first field year) is the progeny of pre-nuclear seed, generation 1 (second field year) is the progeny of nuclear seed, generation 2 (third field year) is the progeny of generation 1 seed, generation 3 (fourth field year) is the progeny of generation 2 seed, generation 4 (fifth field year) is the progeny of generation 3 seed, generation 5 (sixth field year) is the progeny of generation 4 seed, and sixth generation (seventh field year, certified class) is the progeny of generation 5 seed.~~ The certified designation will be granted to lots meeting the minimum standards outlined in section 74-04-01-08 and by approval of the commissioner. Subsequent generations will be regarded as:
 - a. FY1 (first field year) is the progeny of nuclear seed.
 - b. FY2 (second field year) is the progeny of FY1.
 - c. FY3 (third field year) is the progeny of FY2.
 - d. FY 4 (fourth field year) is the progeny of FY3.
 - e. FY5 (fifth field year) is the progeny of FY 4
 - f. FY6 (sixth field year) is the progeny of FY5.
 - g. Certified class (seventh field year) is the progeny of FY6.
3. Prenuclear seed stocks intended to be grown in the field greenhouse as ~~nuclear (GO) seed potatoes~~ minitubers, microtubers, or stem cuttings must be laboratory-tested, be demonstrated to be free of the following pathogens, and meet the following standards:
 - a. *Clavibacter michiganensis* subsp. *sepedonicus* (ring rot).

- b. *Erwinia carotovora* (blackleg and soft rot).
 - c. Potato virus A.
 - d. Potato virus M.
 - e. Potato virus X.
 - f. Potato virus Y.
 - g. Potato leafroll virus.
 - h. Potato spindle tuber viroid.
 - i. Potato mop top virus.
 - j. All micropropagation production must be approved by a certification agency.
 - k. Good records must be maintained on all tests and submitted with the application for field inspection.
 - l. A minimum of one percent of the plantlets must have been tested for the above pathogens using the most reliable testing techniques.
4. Basic seed must originate from sources described above and developed in seed plots and have met specific field inspection and winter test standards established by the state seed department. Seed stocks will be grown a limited number of ~~generations~~field years.
- Experimental cultivars under evaluation by the state seed department in cooperation with universities or industry will meet program requirements of and will be maintained under guidelines and standards established by the state seed department. Seed stocks will be grown a limited number of ~~generations~~field years.
5. Foundation class seed must be seed meeting standards for recertification.
- a. Foundation seed will be produced on farms found to be free of bacterial ring rot for three years. All seed stocks must be replaced on a farm in which bacterial ring rot has been found.
 - b. Excessive blackleg symptoms will be cause for rejection as foundation stock.
6. The certified class must meet the minimum field tolerances described in section 74-04-01-08. The classification serves as a quality standard for commercial planting purposes only and must meet all the requirements and responsibilities of this chapter. The certified class designation may be applied to any ~~generation~~field year under the criteria set forth in section 74-04-01-07.8.
7. ~~Generation numbers~~Field year designations increase with years of field reproduction from the original seed source. ~~Generation~~Field year six (FY6) five will be the final generation of seed eligible for recertification. The certified seed class is not eligible for recertification. If seed availability is low for a specific potato variety, seed lots with more advanced generation numbers may be eligible for recertification providing the seed lot has passed a winter test and prior approval of the state seed department has been obtained.
8. Except for varietal mixtures, seed lots may be downgraded ~~or advanced in generation if they do not meet the disease tolerances for that generation or they may be~~and placed in the certified class and sold by their ~~generation number~~field year designation as certified seed

providing they meet the specifications for that class. Disease tolerances for each **generation****field year** of seed are outlined in the section on field inspection standards.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 1, 2005; January 2, 2006; July 1, 2010; July 1, 2020.

General Authority: NDCC 28-32

Law Implemented: NDCC 4.1-55-02

74-04-01-08. Field inspection standards.

1. Each seed potato field will be visually inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected. For varieties that do not express readily visible symptoms of a disease, laboratory testing may be done for the pathogen.
2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visually may be present.

	First Inspection Tolerances (%) Foundation Class						Certified Class
	01	12	23	34	45	56	0-6
	01	12	23	34	45	56	0-6
Varietal mixture	0.1	0.2	0.3	0.5	0.5	0.5	0.5
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.2	0.3	0.4	0.5	0.5	0.5	1.0
Leaf roll (PLRV)	0.2	0.3	0.4	0.5	0.5	0.5	1.0
Total serious virus	0.2	0.3	0.4	0.5	0.5	0.5	1.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

	Second and All Subsequent Inspections Tolerances (%) Foundation Class						Certified Class
	01	12	23	34	45	56	0-6
	01	12	23	34	45	56	0-6
Varietal mixture	0.1	0.1	0.2	0.3	0.3	0.3	0.3
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.0	0.1	0.2	0.3	0.3	0.3	1.0
Leaf roll (PLRV)	0.0	0.1	0.2	0.3	0.3	0.3	1.0
Total serious virus	0.0	0.1	0.2	0.3	0.3	0.3	1.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Late blight found during field inspection must be confirmed by symptoms or laboratory diagnosis before being reported on the inspection report.

* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease-causing agents, but that none was found during inspection.

Varieties that do not express visible disease symptoms. Potato varieties that do not express visible disease symptoms of a specific pathogen may be subjected to a laboratory test to determine the levels of the pathogen in a seed lot. This testing may occur during the growing season or during the winter test, or both, and may affect eligibility of the seed lot.

Ring rot. Seed fields will be subject to a third (final) field inspection focused primarily on inspection for symptoms related to ring rot. If the field has not received a third inspection, the grower will be required to submit a four hundred tuber sample (minimum) per field for laboratory testing.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed during the first and second inspection, and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded on the first and second inspection, and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths, or other such injurious pests that have never been found and confirmed in North Dakota seed potato fields.

Tolerances for potato virus x tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the farm during the season. Seed lots with no more than two percent potato virus x infection may be identified as virus x tested on certification labels.

3. Field conditions.

- a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering excessive insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.
- b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, a laboratory test may be required or strips of unkilld vines must be left in the seed fields to facilitate final inspections, or both. When strips are left for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.
- c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.
- d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.
- e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official postharvest tests shall be considered ineligible for certification.

4. Appeal. Inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done prior to reinspection.

5. Bacterial ring rot control.
 - a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.
 - b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.
 - c. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.
6. The variety name stated on the application will be the standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the grower will be presumed correct if the documentation provided is valid and the variety description characteristics meet the requirements of the chapter.
7. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the potatoes were randomly inspected, and at the time of the inspection the field or seed lot met the rules of the department.

History: Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; [July 1, 2020](#).

General Authority: NDCC 28-32

Law Implemented: NDCC 4.1-55-02

TITLE 75
DEPARTMENT OF HUMAN SERVICES

JULY 2020

**ARTICLE 75-03
COMMUNITY SERVICES**

Chapter	
75-03-01	Supplemental Parental Child Care and Family Day Care [Superseded]
75-03-01.1	Supplemental Parental Care and Family Day Care [Superseded]
75-03-02	Day Care Centers [Superseded]
75-03-02.1	Day Care Centers [Superseded]
75-03-03	Foster Care Group Homes [Superseded]
75-03-04	Residential Child Care Facilities [Superseded]
75-03-05	Family Boarding Homes for Students With Disabilities [Repealed]
75-03-06	Family Subsidy Program [Redesignated]
75-03-07	In-Home Child Care Early Childhood Services
75-03-07.1	Self-Declaration Providers Early Childhood Services
75-03-08	Family Child Care Homes Early Childhood Services
75-03-09	Group Child Care Early Childhood Services
75-03-10	Child Care Center Early Childhood Services
75-03-11	Preschool Educational Facilities Early Childhood Services
75-03-11.1	School Age Child Care Center Early Childhood Services
75-03-12	Foster Parent Grievance Procedure
75-03-13	Information Corroborating Paternity
75-03-14	Family Foster Care Homes
75-03-15	Ratesetting for Providers of Services to Foster Children - Qualified Residential Treatment Programs
75-03-16	Licensing of Group Homes and Residential Child Care Facilities [Repealed]
75-03-17	Psychiatric Residential Treatment Facilities for Children
75-03-17.1	Authorized Agent in Providing Child Welfare Services
75-03-18	Procedures for Appeal of Child Abuse and Neglect Assessments
75-03-18.1	Child Abuse and Neglect Assessment Grievance Procedure for Conduct of the Assessment
75-03-19	Assessment of Child Abuse and Neglect Reports
75-03-19.1	Child Fatality Review Panel
75-03-20	Ratesetting for Residential Treatment Centers for Children
75-03-21	Licensing of Foster Homes for Adults
75-03-22	Transitional Living [Repealed]
75-03-23	Provision of Home and Community-Based Services Under the Service Payments for Elderly and Disabled Program and the Medicaid Waiver for the Aged and Disabled Program
75-03-24	Expanded Service Payments For Elderly and Disabled
75-03-25	Ombudsman Program

75-03-26	Aging Services Community Programs Under the Older Americans Act [Repealed]
75-03-27	[Reserved]
75-03-28	[Reserved]
75-03-29	[Reserved]
75-03-30	[Reserved]
75-03-31	[Reserved]
75-03-32	Mill Levy [Repealed]
75-03-33	Intergovernmental Transfer Program
75-03-34	Licensing of Assisted Living Facilities
75-03-35	Provision of Medical Food and Low-Protein Modified Food Products to Individuals With Phenylketonuria and Maple Syrup Urine Disease
75-03-36	Licensing of Child-Placing Agencies
75-03-37	Transition-Aged Youth at Risk
75-03-38	Autism Spectrum Disorder Voucher Program
75-03-39	Autism Services Waiver
75-03-40	Licensing of Qualified Residential Treatment Program Providers
75-03-41	Supervised Independent Living
75-03-42	Authorized Electronic Monitoring
75-03-43	<u>Certified Peer Support Specialists</u>

CHAPTER 75-03-07

75-03-07-04. In-home registration and standards.

1. An application for a registration document must be submitted to the department or its authorized agent ~~in the county~~ wherein the applicant proposes to provide in-home services. Application must be made in the form and manner prescribed by the department.
2. An applicant for an in-home registration document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicant:
 - a. Is at least eighteen years of age.
 - b. Is physically, cognitively, socially, and emotionally healthy and will use mature judgment when making decisions impacting the quality of child care.
 - c. Shall devote adequate time and attention to the children in the applicant's care and provide an environment that is physically and socially adequate for children.
 - d. Shall participate in specialized training related to child care if provided by or approved by the department.
 - e. Shall complete one hour of department-approved training annually on sudden infant death prevention prior to in-home provider having unsupervised access to infants.
 - f. Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's care.
 - g. Shall provide proper care, supervision, and protection for children in the applicant's care. Supervision means the provider being within sight or hearing range of an infant, toddler, or preschooler at all times so the provider is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider being available for assistance and care so that the child's health and safety are protected.
 - h. Shall provide for a safe and sanitary environment while children are in care.

- i. May not use or be under the influence of any illegal drugs or alcoholic beverages while children are in care.
 - j. May not leave children without supervision.
 - k. Shall ensure that discipline is constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of an in-home registration.
 - (1) Authority to discipline may not be delegated to children nor may discipline be administered by children.
 - (2) Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of the in-home provider. An in-home provider may not isolate a child in a locked room or closet.
 - (3) A child may not be punished for lapses in toilet training.
 - (4) An in-home provider may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.
 - (5) An in-home provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (6) An in-home provider may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
 - (7) An in-home provider may not use deprivation of meals or snacks as a form of discipline or punishment.
 - (8) An in-home provider may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
 - (9) An in-home provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) An in-home provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
 - l. Shall discuss methods of discipline and child management with the parent or parents.
- 3. If the physical or mental, cognitive, social, or emotional health capabilities of an in-home applicant or provider appear to be questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
 - 4. In-home providers shall ensure safe care for the children receiving services in their care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by the applicant or in-home

provider, that decision has a direct bearing on the applicant's or in-home provider's ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or in-home provider ~~and to the director of the regional human service center or the director's designee for consideration and action on the in-home registration document~~. Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; January 1, 2011; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08

CHAPTER 75-03-07.1

75-03-07.1-02. Self-declaration standards - Application.

1. An applicant for a self-declaration document shall submit the application to the department or its authorized agent ~~in the county~~ in which the applicant proposes to provide early childhood services. An application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, and an application for a fingerprint-based criminal history record check for the applicant and emergency designee, must be made in the form and manner prescribed by the department.
2. A provisional self-declaration document may be issued:
 - a. The ~~director of a regional human service center, or the director's designee, in consultation with the~~ department; may issue a provisional self-declaration document although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
 - b. A provisional self-declaration document must:
 - (1) State that the provider has failed to comply with all applicable standards and rules of the department;
 - (2) State the items of noncompliance;
 - (3) Expire at a set date, not to exceed six months from the date of issuance; and
 - (4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
 - c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:
 - (1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and
 - (2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.
 - d. Any provisional self-declaration document issued must be accompanied by a written statement of violations signed by the ~~director of the regional human service center or the director's designee~~department and must be acknowledged in writing by the provider.
 - e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the provider to all rights and privileges afforded the provider of an unrestricted self-declaration document.
 - f. The provider shall display prominently the provisional self-declaration document and agreement.
 - g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.

3. The provider shall be directly responsible for the care, supervision, and guidance of the children.
 - a. The provider:
 - (1) Must be at least eighteen years of age;
 - (2) Shall provide an environment that is physically and socially adequate for the children; and that the provider is of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - (3) Shall devote adequate time and attention to the children in the provider's care;
 - (4) Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the provider's care;
 - (5) Shall provide proper care and protection for children in the provider's care;
 - (6) May not use or be under the influence of, and will not allow any household member or emergency designee to use or be under the influence of any illegal drugs or alcoholic beverages while caring for children;
 - (7) May not leave children without supervision;
 - (8) Shall verify that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child;
 - (9) Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
 - (10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;
 - (11) Shall ensure a current health assessment or a health assessment statement completed by the parent is obtained at the time of initial enrollment of the child, which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually;
 - (12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter;
 - (13) Shall certify completion of a department-approved basic child care course within ninety days of being approved as a provider;
 - (14) Shall be currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
 - (15) Shall be currently certified in first aid by a program approved by the department;

- (16) Shall complete a minimum of three hours of department-approved training annually, including one hour on sudden infant death prevention prior to provider having unsupervised access to infants. The same training courses may be counted toward self-declaration annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training;
 - (17) Shall ensure the emergency designee is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
 - (18) Shall ensure the emergency designee is currently certified in first aid by a program approved by the department;
 - (19) Shall ensure the emergency designee certifies completion of a department-approved basic child care course within ninety days;
 - (20) Shall ensure that the emergency designee completes one hour of department-approved training on sudden infant death prevention prior to emergency designee having unsupervised access to infants; and
 - (21) Shall release a child only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.
- b. The provider shall ensure that discipline will be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint such as holding. A child may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or neglect or abuse to any child is grounds for denial or revocation of a self-declaration document.
- (1) A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, struck, mechanically restrained, or physically maltreated by the provider, emergency designee, household member, or any other adult in the residence.
 - (2) Authority to discipline may not be delegated to or be administered by children.
 - (3) Separation, when used as discipline, must be appropriate to the child's development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. A child may not be isolated in a locked room or closet.
 - (4) A child may not be punished for lapses in toilet training.
 - (5) A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion when addressing a child or in the presence of a child.
 - (6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (7) A provider may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.

- (8) A provider may not use deprivation of snacks or meals as a form of discipline or punishment.
 - (9) A provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- c. The provider shall ensure that a working smoke detector is properly installed and in good working order on each floor used by children.
 - d. The provider shall ensure that a fire extinguisher that is inspected annually is properly installed, is in good working order, and is located in the area used for child care.
 - e. The provider shall ensure that a working telephone is located in the location used for child care. Emergency numbers for parents and first responders must be posted.
 - f. When transportation is provided by a provider, children must be protected by adequate supervision and safety precautions.
 - (1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.
 - (2) A child must not be left unattended in a vehicle.
 - g. Aquatic activities:
 - (1) The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of the children participating in aquatic activities, and additional safety precautions to be taken.
 - (2) The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
- 4. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.
 - 5. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require that the individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
 - 6. A self-declaration document is only effective for one year.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-06. Denial or revocation of self-declaration document.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application as listed in section 75-03-07.1-02.
 2. A fraudulent or untrue representation is grounds for revocation or denial.
 3. a. The applicant, self-declaration provider, emergency designee, and household members may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
 - b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, or emergency designee's ability to serve the public in a capacity as a provider or emergency designee.
 - c. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each emergency designee submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

5. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
6. A provider shall ensure safe care for the children receiving services in the provider's residence. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that a child has been abused or neglected by an applicant, provider, emergency designee, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or self-declaration document may be denied or revoked.
 - a. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, or household member, the applicant or provider shall furnish information to the department, from which the department can determine the applicant's, provider's, or emergency designee's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the applicant or provider ~~and to the director of the regional human service center or the director's designee for consideration and action on the application or self-declaration document.~~
 - b. Each applicant, provider, and emergency designee shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
 - c. Household members over the age of twelve shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the child care.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020.

General Authority: NDCC 50-11.1-08, 50-11.1-09

Law Implemented: NDCC 50-11.1-06.2, 50-11.1-08, 50-11.1-09, 50-11.1-16, 50-11.1-17

75-03-07.1-10. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection 24 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, paragraph 5 or 7 of subdivision a of subsection 3 of section 75-03-07.1-02, subdivision b of subsection 3 of section

75-03-07.1-02, or subsection 4 of section 75-03-07.1-02, or section 75-03-07.1-08, within twenty-four hours.

- b. For a violation of subdivision g or h of subsection 1 of North Dakota Century Code section 50-11.1-17 or all other deficiencies of chapter 75-03-07.1, within twenty days.
2. All periods of correction begin on the date of the receipt of the correction order by the provider.
3. The ~~regional supervisor of early childhood services~~ department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms the corrections have been made.
5. The provider shall notify the parent of each child receiving care at the residence and each emergency designee how to report a complaint or suspected rule violation.
6. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care by this provider that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also must post the correction order in a conspicuous location within the residence until the violation has been corrected or five days, whichever is longer.
7. A provider who has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the provider has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the provider. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

History: Effective January 1, 2011; amended effective January 1, 2013; April 1, 2014; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-08

CHAPTER 75-03-08

75-03-08-06. Provisional license.

1. The ~~director of a regional human service center, or the director's designee, in consultation with the~~ department; may issue a provisional license for the operation of a family child care although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the provider has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance as the provisional license, after the applicant or provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or provider who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~director of the regional human service center or the regional director's designee~~ department and must be acknowledged in writing by the provider.
5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded to the holder of an unrestricted license.
6. The department may not issue a provisional license if the family child care is not in compliance with section 75-03-08-14.
7. The provider shall prominently display the provisional license and agreement.
8. The provider shall provide parents written notice that the family child care is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-08-07. Application for and nontransferability of family child care license.

1. An application for a license must be submitted to the [department or its](#) authorized agent ~~in the county~~ in which the family child care is located. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only for the premises indicated on the license. A new application for a license must be filed upon change of provider or location.
3. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-08-08.1. Duties of the provider.

1. A provider shall be currently certified:
 - a. In infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department; and
 - b. In first aid by a program approved by the department.
2. The provider shall have an adult staff member responsible for caring for or teaching children present in the family child care at all times to supervise staff members under the age of eighteen and children in care.
3. A staff member may not at any time place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.
4. The provider shall report to the [department or its](#) authorized agent within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the family child care or attributable to care received in the family child care;
 - b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
 - c. Poisonings or errors in the administration of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the family child care.
5. The provider shall be present in the family child care no less than sixty percent of the time when children are in care.
6. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.
7. The provider may select an emergency designee.

8. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.
9. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
10. The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.
11. The provider shall ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-14. Minimum requirements of the facility.

1. The family child care must contain adequate space, indoors and out, for the daily activities of the children. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child are exempt from the outdoor space requirement.
2. The family child care must be clean and maintained to protect the health and safety of children. The family child care and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. Garbage must be regularly removed.
3. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The provider shall ensure that the family child care is equipped with one properly installed smoke detector located in each sleeping area used by the children, and one properly installed smoke detector and one fire extinguisher per level. Properly installed means installed according to manufacturer's or fire inspector's directions.
5. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
6. The provider shall ensure that the family child care has a drinking water supply from an approved community water system or from a source tested and approved by the state department of health.
7. The provider shall ensure that each child has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, and free from drafts.

8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. The provider shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and sanitary. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
11. The provider shall ensure that exit doorways and pathways are not blocked.
12. The provider shall ensure that the family child care has a working telephone in the location used for child care. The provider shall post emergency numbers of parents and first responders.
13. The family child care must have an indoor bathroom with a minimum of one sink and one flush toilet.
14. The family child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
15. The family child care must meet the local minimum fire and safety standards. The provider shall obtain a fire inspection prior to licensure and annually thereafter. Any inspection fees are the provider's responsibility. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the [department or its](#) authorized agent. If the fire, safety, health, or sanitation environment appears questionable, the department or [its](#) authorized agent may require the provider to obtain additional inspections at the cost of the provider. The provider shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the family child care has been inspected and that the inspector is satisfied that the family child care meets minimum fire and safety standards.
16. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
17. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-21.1. Minimum sanitation and safety requirements.

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs.
2. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels must be available at each sink.
3. The provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
4. The provider shall ensure at least one department-approved first-aid kit is maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times.
5. The provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
6. If children in care require medication, the provider shall secure written permission and follow proper instructions as to the administration of medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage and labeled with the child's name and date.
 - b. The provider shall store medications in an area inaccessible to children.
 - ~~b-c.~~ Medications stored in a refrigerator must be stored collectively in a spill proof container.
 - ~~e-d.~~ The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
7. The provider shall establish practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions. The provider may obtain this guidance directly or through current published materials regarding exclusion and return to the family child care.
8. The provider may release a child only to the child's parent or individual who has been authorized by the child's parent.
9. The provider shall ensure that children playing outdoors are clothed appropriately for weather conditions.
10. The provider shall ensure that a staff member responsible for caring for or teaching children is supervising directly any child who is bathing or using a pool.
11. The provider shall ensure that children receive proper supervision when playing outdoors.
12. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.

13. Pets and animals.
 - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
 - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
 - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the family child care and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by the children must be approved annually by the local health unit.
16. Aquatic activities:
 - a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
17. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.
18. The provider shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the provider shall ensure:

- a. Pillows and mattresses have clean coverings.
- b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
- c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
- d. Cots, mats, and cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children.
- e. That cots, mats, and cribs are single occupancy.
- f. Each bed, cot, or mat has sufficient blankets available.
- g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
- h. Provide separate storage for personal blankets or coverings.
- i. That mattresses and sheets are properly fitted.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's family child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider ~~and to the regional director of the human service center or the director's designee for consideration and action on the application or license.~~
2. Each applicant, provider, emergency designee, and staff member in the family child care shall complete, and the provider shall submit to the [department or its](#) authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members over the age of twelve shall complete, and the provider shall submit to the [department or its](#) authorized agent, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-29. Correction of violations.

1. A provider shall correct violations noted in a correction order within the following times:
 - a. For a violation of subsection 8 of North Dakota Century Code section 50-11.1-02, North Dakota Century Code section 50-11.1-02.2, section 75-03-08-04, subsection 4 or 11 of section 75-03-08-08.1, section 75-03-08-09, subsection 2 or 9 of section 75-03-08-14, section 75-03-08-23, or subsection 1 of section 75-03-08-24, within twenty-four hours.
 - b. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
 - c. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - d. For all other violations, within twenty days.
2. All periods for correction begin on the date of receipt of the correction order by the provider.
3. The ~~regional supervisor of early childhood services~~[department](#) may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the [department or its](#) authorized agent upon completion of the required corrective action. The correction order remains in effect until the [department or its](#) authorized agent confirms the corrections have been made.
5. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the family child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also shall post the correction order in a conspicuous location within the family child care until the violation has been corrected or for five days, whichever is longer.
6. A family child care program that has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the program has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a family child care program receives more than one correction order in a single year, the provider may be referred by the department for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-09

75-03-09-06. Provisional license.

1. The ~~director of a regional human service center, or the director's designee, in consultation with the~~ department; may issue a provisional license for the operation of a group child care although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the provider has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or provider demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or provider who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~director of the regional human service center or the director's designee~~ department and must be acknowledged in writing by the provider.
5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.
6. The department may not issue a provisional license if the group child care is not in compliance with section 75-03-09-17 or 75-03-09-18.
7. The provider shall display prominently the provisional license and agreement.
8. The provider shall provide parents written notice that the group child care is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-09-07. Application for and nontransferability of group child care license.

1. An application for license must be submitted to the [department or its](#) authorized agent. Application must be made in the form and manner prescribed by the department.

2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license.
3. An application for a new license must be filed upon change of provider or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-09-08. Duties of group child care provider.

1. The provider of a group child care is responsible for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. The provider shall:
 - a. Establish the child care program;
 - b. Apply for a license for the group child care;
 - c. Possess knowledge or experience in management and interpersonal relationships;
 - d. Formulate written policies and procedures for the operation of the group child care. Policies must include:
 - (1) An explanation of how accidents and illnesses will be handled;
 - (2) The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - (3) The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - (4) Hiring practices and personnel policies for staff members;
 - (5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;
 - (6) Procedure for accountability when a child fails to arrive as expected at the child care; and
 - (7) Transportation procedures, if the provider provides transportation;
 - e. Notify the [department or its](#) authorized agent of any major changes in the operation or in the ownership of the group child care, including staff member changes;
 - f. Maintain records of enrollment, attendance, health, and other required records;
 - g. May select an emergency designee;

- h. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care;
 - i. Ensure the group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 - j. Ensure preadmission visits for children and their parents are offered so the facility's program, fees, operating policies, and procedures can be viewed and discussed;
 - k. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
 - l. Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care. Providing unlimited access does not prohibit a group child care from locking its doors while children are in care;
 - m. Provide parents with the name of the group child care provider, the group child care supervisor, staff members, and the emergency designee;
 - n. Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
 - o. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises; and
 - p. Ensure that each child is released only to the child's parent, legal custodian, guardian, or individual who has been authorized by the child's parent, legal custodian, or guardian.
2. If the provider is also the group child care supervisor, the provider shall also meet the qualifications of the supervisor in section 75-03-09-10.
 3. The provider shall report to the [department or its](#) authorized agent within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the group child care or attributable to care received in the group child care;
 - b. An injury to any child which occurs while the child is in the care of the group child care and which requires medical treatment;
 - c. Poisonings or errors in the administering of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs and explosions that occur in or on the premises of the group child care.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-14. Minimum requirements for facility.

1. The provider shall ensure that the group child care is properly lighted. If the lighting of the group child care appears questionable, the department or [its](#) authorized agent may require the provider to obtain additional lights.
2. The provider shall ensure that safe and comfortable arrangements for naps for enrolled children are provided.
 - a. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.
 - b. The provider shall ensure that there is a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.
3. Water supply:
 - a. The provider shall ensure that the group child care has a drinking supply from a community water system or from a source tested and approved by the department of environmental quality.
 - b. The group child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
4. Toilet and sink facilities:
 - a. The provider shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff.
 - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
 - c. The provider shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
 - d. The provider shall provide at least one handwashing sink per toilet room facility or diapering area. The provider shall provide sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels near handwashing sinks.
 - e. The provider shall provide safe step stools to allow standard-size toilets and sinks to be used by the children or the provider shall ensure the availability of child-size toilets and sinks.
5. The operator of a group child care not on a municipal or public water supply or wastewater disposal system shall ensure the group child care's sewage and wastewater system has been approved by the department of environmental quality.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-17. Fire inspections.

1. The provider shall ensure that initial and annual fire inspections are completed by local or state fire authorities for all group child cares in which care is provided. The group child care is responsible for any inspection fee. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the [department or its](#) authorized agent. If the fire, safety, health, or sanitation environment appears questionable, the department or [its](#) authorized agent may require the provider to obtain additional inspections at the cost of the provider.
2. The provider shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the group child care has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards.
3. The provider shall ensure that the group child care is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-18. Minimum sanitation and safety requirements.

1. In facilities other than an occupied private residence and where meals are prepared, the provider shall ensure that the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the [department or its](#) authorized agent.
2. The provider shall ensure that the group child care bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. The provider shall ensure that the group child care building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the staff members.
4. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.
5. The provider shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

6. The provider shall ensure that the group child care ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. The provider shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks . The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure that indoor floors and steps are not slippery and do not have splinters. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
11. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
12. The provider shall take steps to keep the group child care free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care. Insect repellent may be applied outdoors on children with parental permission.
13. The provider shall ensure that exit doorways and pathways are not blocked.
14. The provider shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
15. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.
16. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
17. A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.

18. The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes, are individually identified and stored in a sanitary manner.
19. Pets and animals.
 - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.
 - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
 - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
20. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care and shall empty, clean, and sanitize wading pools daily.
21. All swimming pools used by children must be approved annually by the local health unit.
22. Aquatic activities:
 - a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
23. The provider shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
 - a. Pillows and mattresses have clean coverings.

- b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
- c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
- d. Cots, mats, or cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children;
- e. That cots, mats, and cribs are single occupancy.
- f. Each bed, cot, or mat has sufficient blankets available.
- g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
- h. Provide separate storage for personal blankets or coverings.
- i. That mattresses and sheets are properly fitted.

History: Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's group child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, emergency designee's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider ~~and to the regional director of the human service center or the director's designee for consideration and action on the group child care application or license.~~
2. Each applicant, provider, emergency designee, and staff member in the group child care shall complete, and the provider shall submit to the [department or its](#) authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members over the age of twelve shall complete, and the provider shall submit to the [department or its](#) authorized agent, a department-approved authorization for background check form at the time of application or relicensure or upon obtaining residence at the location of the group child care.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-29. Correction of violations.

1. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the group child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider shall post the correction order in a conspicuous location within the facility until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-09-04; subdivision i of subsection 1 of section 75-03-09-08; section 75-03-09-09; subsection 4 or 8 of section 75-03-09-12; subsection 3, 6, 9, or 10 of section 75-03-09-18; section 75-03-09-23; or subsection 1 of section 75-03-09-24, within twenty-four hours;
 - b. For a violation requiring the hiring of a group child care supervisor with those qualifications set forth in section 75-03-09-10, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the provider.
4. The ~~regional supervisor of early childhood services~~[department](#) may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
5. The provider shall furnish written notice to the [department or its](#) authorized agent upon completion of the required corrective action. The correction order remains in effect until the [department or its](#) authorized agent confirms the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a group child care that has been issued a correction order. If, upon reinspection, it is determined that the group child care has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the group child care. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a group child care receives more than one correction order in a single year, the department or its authorized agent may refer the group child care for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-10

75-03-10-06. Provisional license.

1. The ~~director of a regional human service center, or the director's designee, in consultation with the~~ department; may issue a provisional license for the operation of a child care center although the applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the operator has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or operator who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~director of the regional human service center or the director's designee~~ department and must be acknowledged in writing by the operator.
5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded the holder of an unrestricted license.
6. The department may not issue a provisional license if the center is not in compliance with section 75-03-10-17 or 75-03-10-18.
7. The operator shall display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the center is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-10-07. Application for and nontransferability of child care center license.

An application for a license must be submitted to the [department or its](#) authorized agent.

1. An applicant shall submit an application for a license to the [department or its](#) authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and is valid only for the premises that are indicated on the license.
3. An application for a new license must be filed by the operator upon change of operator or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-10-09. Duties of child care center operator.

The operator is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director and shall delegate appropriate duties to the director:
 - a. The operator shall ensure that the director or a designated acting director is present at the center at least sixty percent of the time when the center is open;
 - b. The operator shall ensure that the individual designated as an acting director meets the qualifications of a supervisor and for an ongoing period of more than thirty days meets the qualifications of a director; and
 - c. The operator shall ensure that when the director and acting director are not present at the center, a person who meets the qualifications of a supervisor is on duty;
2. Apply for a license for the child care center;
3. Provide an environment that is physically and socially adequate for children;
4. Notify the [department or its](#) authorized agent of any major changes in the operation, ownership, or governing body of the child care center, including staff member changes;
5. Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center;
6. Formulate written policies and procedures for the operation of the child care center. Policies must include:
 - a. Hiring practices and personnel policies for staff members;
 - b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;

- d. Children's activities, care, and enrollment;
 - e. The responsibilities and rights of staff members and parents;
 - f. An explanation of how accidents and illnesses will be handled;
 - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;
 - j. Procedures for accountability when a child fails to arrive as expected at the child care; and
 - k. Transportation procedures, if the operator provides transportation;
7. Maintain records of enrollment, attendance, health, and other required records;
 8. May select an emergency designee;
 9. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the child care center;
 10. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program;
 11. Ensure that parents of enrolled children:
 - a. Are advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
 - b. Receive written notice of the effective date, duration, scope, and impact of any significant changes in the center's services; and
 - c. Receive notice that they may request written daily reports for their child, including details regarding eating, napping, and diapering;
 12. Ensure that the center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 13. Ensure that the child care center has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or otherwise unable to be on duty;
 14. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
 15. Provide parents with unlimited access and opportunities for parents to observe their children while in care, and provide parents with regular opportunities to meet with staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a child care center from locking its doors while children are in care;
 16. Provide parents, upon request, with progress reports on their children;

17. Report immediately, as a mandatory reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
18. Ensure that staff members responsible for caring for or teaching children under the age of eighteen are supervised by an adult staff member;
19. Meet the qualifications of the director set forth in section 75-03-10-10, if the operator is also the director;
20. Report to the [department or its](#) authorized agent within twenty-four hours:
 - a. A death or a serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the child care center;
 - b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;
 - c. Poisonings or errors in the administering of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the child care center;
21. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises; and
22. Ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the [department or its](#) authorized agent.
2. The operator shall ensure that the child care center is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or

- b. The fire inspector's written statement that the child care center has been inspected and that the inspector is satisfied that the child care center meets minimum fire and safety standards.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that in child care centers, other than an occupied private residence, where meals are prepared, the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department or its authorized agent.
2. The operator shall ensure that the child care center bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. The operator shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the operator shall ensure:
 - a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, and cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children.
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, cribs, and portable cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, cribs, and portable cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.
 - i. That mattresses and sheets are properly fitted.
4. The operator shall ensure that the child care center's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
5. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels must be available at each sink.

6. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
7. The operator shall ensure that the child care center ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
8. The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
9. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
10. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
13. The operator shall take steps to keep the child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the child care center. Insect repellent may be applied outdoors on children with written parental permission.
14. The operator shall ensure that exit doorways and pathways are not blocked.
15. If the center is providing care to children in wheelchairs, the operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.
16. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
17. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
18. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
19. The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area

where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.

20. The operator shall ensure that personal items including combs, pacifiers, and toothbrushes are individually identified and stored in a sanitary manner.
21. Pets and animals.
 - a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
22. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center and shall empty, clean, and sanitize wading pools daily.
23. All swimming pools used by children must be approved annually by the local health unit.
24. Aquatic activities:
 - a. The operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program

may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

- b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

25. Water supply:

- a. The operator shall ensure that the child care center has a drinking supply from an approved community water system or from a source tested and approved annually by the department of environmental quality.
- b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.
- c. The child care center must have hot and cold running water. The water in the faucets used by children may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

26. Toilet and sink facilities:

- a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members.
- b. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
- c. The operator shall ensure that separate restrooms are provided for boys and girls six years of age and over, and partitions are installed to separate toilets in these restrooms.
- d. The operator shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
- e. The operator shall provide at least one handwashing sink per toilet room facility or diapering area.
- f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.

27. The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the department of environmental quality.

28. Laundry:

- a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.
- b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation.
- c. The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area

that is separated by a permanent partition from food preparation, serving, and kitchen areas.

- d. The operator shall ensure that in an existing child care center where physical separation of laundry and kitchen areas is impractical, procedures are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.
- e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas.
- f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius].
- g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the center shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. When parents bring sack lunches for their children, the operator may supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of the day.
4. The operator shall serve nutritious meals to children in care during any normal mealtime hour.
5. The operator shall serve snacks to children in care in afterschool child care center programs.
6. When the operator is responsible for providing food to children, menus must be prepared on a weekly or daily basis and made available to the parents, the [department or its](#) authorized agent, and other appropriate individuals.
7. The operator shall consider information provided by the children's parents as to the children's eating habits, food preferences, or special needs in creating the feeding schedules and in tailoring menus.
8. The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.

9. The operator or staff member may encourage children to eat the food served, but the operator or staff member may not coerce or force-feed children.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07, 50-11.1-08

75-03-10-28. Child abuse and neglect decisions.

An operator shall ensure safe care for the children receiving services in the child care center.

1. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provisions of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator ~~and to the director of the regional human service center or the director's designee for consideration and action on the application or license.~~
2. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the [department or its](#) authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-29. Correction of violations.

1. Within three business days of the receipt of the correction order, the operator shall notify the parents of each child receiving care at the child care center that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the child care center until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-10-04 or 75-03-10-08; subsection 12 of section 75-03-10-09; subdivision e of subsection 1 of section 75-03-10-12; subsection 3 of section 75-03-10-12; subsection 3, 6, 9, or 10 of section 75-03-10-18; section 75-03-10-23; or subsection 1 of section 75-03-10-24, within twenty-four hours;

- b. For a violation requiring the hiring of a child care supervisor with those qualifications set forth in section 75-03-10-11.1, or a child care center director with those qualifications set forth in section 75-03-10-10, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the operator.
 4. The ~~regional supervisor of early childhood services~~ department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violations.
 5. The operator shall furnish a written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a child care center that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the child care center has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the child care center. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a child care center receives more than one correction order in a single year, the operator may be referred by the department for consulting services to assist the operator in maintaining compliance and to avoid future corrective action.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11

75-03-11-06. Provisional license.

1. The ~~director of a regional human service center, or the director's designee, in consultation with the department;~~ may issue a provisional license for the operation of a preschool although the preschool educational facility applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the operator has failed to comply with all applicable standards and rules of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or operator who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~director of the regional human service center or the director's designee~~department and must be acknowledged in writing by the applicant or operator.
5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.
6. The department may not issue a provisional license if the preschool is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The operator shall display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the preschool is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; July 1, 2020.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11-07. Application for and nontransferability of preschool license.

1. An applicant shall submit an application for a license to the department or its authorized agent. Application must be made in the form and manner prescribed by the department.

2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license. An application for a new license must be filed upon change of operator or location.
3. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11-08. Duties of preschool operator.

The operator of a preschool is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:

1. Designate a qualified director, delegate appropriate duties to the director, and shall:
 - a. Ensure that the preschool director or designated acting director is present at the preschool at least sixty percent of the time that the preschool is open;
 - b. Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a preschool director; and
 - c. Ensure that the individual designated as a teacher for more than thirty-two hours per month meets the qualifications of a preschool teacher;
2. Apply for a license for the preschool;
3. Possess knowledge or experience in management and interpersonal relations;
4. Notify the [department or its](#) authorized agent of any major changes in the operation or in the ownership or governing body of the preschool, including staff member changes;
5. Ensure that liability insurance against bodily injury and property damage for the preschool is carried;
6. Formulate written policies and procedures for the operations of the preschool. Policies must include:
 - a. Hiring practices and personnel policies for staff members;
 - b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;
 - d. Children's activities, care, and enrollment;
 - e. The responsibilities and rights of staff members and parents;
 - f. An explanation of how accidents and illnesses will be handled;

- g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;
 - j. Procedure for accountability when a child fails to arrive as expected at the preschool; and
 - k. Transportation procedures, if the operator provides transportation;
7. Maintain records of enrollment, attendance, health, financial, and other required records;
 8. Be responsible for all preschool staff members, teachers, preschool assistants, substitute staff members, emergency designees, volunteers, or others who provide services in the preschool;
 9. Report immediately, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
 10. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the preschool;
 11. Ensure preadmission visits for children and their parents are offered so the preschool's program, fees, operating policies, and procedures can be viewed and discussed;
 12. Ensure that there are signed written agreements with the parents of each child which specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;
 13. Ensure the preschool is sufficiently staffed at all times to meet the child and staff member ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
 14. Provide parents, upon request, with progress reports on their children and provide unlimited opportunities for parents to observe their children while in care;
 15. Provide parents with the name of the preschool operator, the director, teachers, preschool assistants, staff members, substitute staff members, and the emergency designee;
 16. Meet the qualifications of the director set forth in section 75-03-11-08.1 if the operator is also the director;
 17. Report to the [department or its](#) authorized agent within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the preschool or attributable to care received in the preschool;
 - b. An injury to any child which occurs while the child is in the care of the preschool which requires medical treatment;
 - c. Poisonings or errors in the administering of medication;
 - d. Closures or relocations due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the preschool;
 18. Ensure that children do not depart from the child care premises unsupervised, except when the parent and provider consent that an unsupervised departure is safe and appropriate for

the age and development of the child. The provider shall obtain written parental consent for the child to leave the child care premises unsupervised, which must specify the activity, time the child is leaving and length of time the child will be gone, method of transportation, and parental responsibility for the child once the child leaves the child care premises; and

19. Ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed for the preschool by local or state fire authorities. The operator shall correct or have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the [department or its](#) authorized agent.
2. The operator shall ensure that the preschool is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code; or
 - b. The fire inspector's written statement that the preschool has been inspected and that the inspector is satisfied that the preschool meets the minimum fire and safety standards.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that the preschool's bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
2. The operator shall ensure that the preschool's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and staff members.
3. The operator shall ensure that in preschools where meals are prepared, the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the [department or its](#) authorized agent.
4. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable

must be sanitized as much as possible without damaging the integrity or educational value of the item.

5. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. When the preschool is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
6. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
7. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
8. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
9. The operator shall ensure that elevated areas including stairs and porches have railings and safety gates where necessary to prevent falls.
10. The operator shall take steps to keep the preschool free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool. Insect repellent may be applied outdoors on children with written parental permission.
11. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
12. The operator shall ensure that exit doorways and pathways are not blocked.
13. An operator shall ensure that all preschool buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by children must be approved annually by the local health unit.
16. Aquatic activities:
 - a. An operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may

participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

- b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

17. Pets and animals.

- a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
- b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
- d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. A staff member responsible for caring for or teaching children shall closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
- h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

- 18. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-28. Child abuse and neglect determinations.

An operator shall ensure safe care for the children receiving services in the preschool.

1. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by any applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, it has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, teacher's, assistant's, staff member's, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator ~~and to the director of the regional human service center or the director's designee for consideration and action on the preschool application or license.~~
2. Each applicant, operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete, and the operator shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-29. Correction of violations.

1. Within three business days of receipt of the correction order, the operator shall notify the parents of each child enrolled in the preschool that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the preschool until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; section 75-03-11-04; subsection 13 of section 75-03-11-08; section 75-03-11-09; subsection 4 of section 75-03-11-10; subsection 3 of section 75-03-11-13; subsection 2, 7, or 8 of section 75-03-11-18; or section 75-03-11-23, within twenty-four hours;
 - b. For a violation requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days; and
 - e. For all other violations, within twenty days.
3. All periods for correction begin on the date of receipt of the correction order by the operator.

4. The ~~regional supervisor of early childhood services~~department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.
5. The operator shall furnish written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a preschool that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the preschool has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the preschool. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a preschool receives more than one correction order in a single year, the operator may be referred by the department for consulting services. The consulting services will be offered to assist the operator in maintaining compliance and to avoid future corrective action.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014; July 1, 2020.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-11.1

75-03-11.1-06. Provisional license.

1. The ~~director of a regional human service center, or the director's designee, in consultation with the~~ department may issue a provisional license for the operation of a school-age child care program although the applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
 - a. State that the operator has failed to comply with all applicable standards and regulations of the department;
 - b. State the items of noncompliance;
 - c. Expire at a set date, not to exceed six months from the date of issuance; and
 - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
3. The department may issue a provisional license only to an applicant or operator who has waived, in writing:
 - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~director of the regional human service center or the director's designee~~ department and must be acknowledged in writing by the applicant or operator.
5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.
6. The department may not issue a provisional license if the school-age child care program is not in compliance with section 75-03-11.1-17 or 75-03-11.1-18.
7. The operator shall display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the school-age child care program is operating on a provisional license and the basis for the provisional license.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11.1-07. Application for and nontransferability of school-age child care program license.

1. An applicant shall submit an application for a license to the [department or its](#) authorized agent. Application must be made in the form and manner prescribed by the department.
2. A license issued under this chapter is nontransferable and is valid only for the premises indicated on the license.
3. An application for a new license must be filed upon change of operator or location.
4. The department may not issue more than one in-home registration, self-declaration, or license per residence. A residence means real property that is typically used as a single family dwelling. A provider or operator with more than one in-home registration, self-declaration, or license in a single residence or two or more providers or operators operating under in-home registrations, self-declarations, or licenses out of the same residence prior to January 1, 2011, will be exempt from this subsection until January 1, 2016, after which time all operators will be subject to this subsection.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11.1-08. Duties of school-age child care program operator.

The operator of a school-age child care program is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator:

1. Shall designate a qualified director, shall delegate appropriate duties to the director, and shall:
 - a. Ensure that the director is present at the school-age child care program at least sixty percent of the time that the program is open. If the operation has satellite sites, the director shall be present a combined total of sixty percent of the school-age program's hours of operation.
 - b. Ensure that when the director and designated acting director are not present at the program, a person who meets the qualifications of a supervisor is on duty.
 - c. Ensure that the individual designated as an acting director for longer than thirty consecutive days meets the qualifications of a school-age child care program director.
 - d. Ensure that if the operator of the school-age child care program is also the director, that the operator meets the qualifications of a director set forth in section 75-03-11.1-08.1;
2. Shall apply for a license for the school-age child care program;
3. Shall provide an environment that is physically and socially adequate for children;
4. Shall notify the [department or its](#) authorized agent of any major changes in the operation of, or in the ownership or governing body of the school-age child care program, including staff member changes;
5. Shall ensure that the school-age child care program carries liability insurance against bodily injury and property damage;

6. Shall formulate written policies and procedures for the operation of the school-age child care program relating to:
 - a. Hiring practices and personnel policies for all staff members;
 - b. Methods for obtaining references and employment histories of staff members;
 - c. Methods of conducting staff member performance evaluations;
 - d. Children's activities, care, and enrollment;
 - e. The responsibilities and rights of staff members and parents;
 - f. An explanation of how accidents and illnesses may be handled;
 - g. The methods of developmentally appropriate discipline and guidance techniques that are to be used;
 - h. The process for a parent or staff member to report a complaint, a suspected licensing violation, and suspected child abuse or neglect;
 - i. The care and safeguarding of personal belongings brought to the child care center by a child or by another on a child's behalf;
 - j. Procedure for accountability when a child fails to arrive as expected at the school-age child care program; and
 - k. Transportation procedures, if the operator provides transportation;
7. Shall maintain enrollment, attendance, health, and other required records;
8. May select an emergency designee;
9. Shall maintain necessary information to verify staff member qualifications and to ensure safe care for the children in the school-age child care program;
10. Shall inform parents of enrolled children and other interested parties about the school-age child care program's goals, policies, procedures, and content of the program;
11. Shall advise parents of enrolled children of the school-age child care program's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
12. Shall provide parents of enrolled children information regarding the effective date, duration, scope, and impact of any significant changes in the school-age child care program's services;
13. Shall ensure that the school-age child care program is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
14. Shall ensure that the school-age child care program has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;
15. Shall ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
16. Shall provide parents with unlimited access and opportunities for parents to observe their children while in care and provide parents with regular opportunities to meet with staff

members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a school-age child care program from locking its doors when children are in care;

17. Shall provide parents, upon request, with progress reports on their children;
18. Shall ensure that provisions are made for safe arrival and departure of all children, and a system is developed to ensure that children are released only as authorized by the parent;
19. Shall develop a system to ensure the safety of children whose parents have agreed to allow them to leave the program without supervision, which must include, at a minimum:
 - a. Written permission from the parents allowing a child to leave the program without supervision; and
 - b. Consistent sign-out procedures for released children;
20. Shall report immediately, as a mandated reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1;
21. Shall meet the qualifications of the director set forth in section 75-03-11.1-08.1 if the operator of the school-age child care program is also the director;
22. Shall ensure that staff members responsible for caring for or teaching children under the age of eighteen are directly supervised by an adult staff member; and
23. Shall report to the [department or its](#) authorized agent within twenty-four hours:
 - a. The death or serious accident or illness requiring hospitalization of a child while in the care of the program or attributable to care received in the program;
 - b. An injury to any child which occurs while the child is in the care of the program and which requires medical treatment;
 - c. Poisonings or errors in the administration of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the school-age child care program.
24. Shall ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the [department or its](#) authorized agent.

2. The operator shall ensure that the school-age child care program is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall ensure that the school-age child care program provides:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the school-age child care program has been inspected and that the inspector is satisfied that the school-age child care program meets minimum fire and safety standards.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-18. Minimum sanitation and safety requirements.

1. In school-age child care programs where meals are prepared, the operator shall ensure that the state department of health conducts an annual inspection. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the [department or its](#) authorized agent. If only snacks or occasional cooking projects are prepared, a health inspection is not required.
2. The operator shall ensure that the school-age child care program's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
3. The operator shall ensure that the school-age child care program ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
4. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
5. The operator shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
6. The operator shall ensure that wading pools used by the school-age child care program are strictly supervised and are emptied, cleaned, and sanitized daily.
7. The operator shall ensure that all swimming pools are approved annually by the local health unit.
8. Aquatic activities:
 - a. The operator shall have policies which ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program

may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.

- b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
9. The operator shall ensure that all school-age child care program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
10. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
13. If the school-age child care program is providing care to children in wheelchairs, the operator shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.
14. The operator shall ensure that exit doorways and pathways are not blocked.
15. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
16. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
17. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the school-age child care program is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
18. The operator shall ensure that school-age child care program bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
19. The operator shall ensure that personal items including combs and toothbrushes are individually identified and stored in a sanitary manner.
20. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.

Hand soap and paper towels, sanitary hand-drying equipment, or single-use or individually designated cloth towels must be available at each sink.

21. The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
22. Water supply standards:
 - a. The operator shall ensure that the school-age child care program has a drinking supply from an approved community water system or from a source tested and approved annually by the department of environmental quality;
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and
 - c. The school-age child care program must have hot and cold running water.
23. Toilet and sink facilities:
 - a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members;
 - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;
 - c. A minimum of one flush toilet must be provided for each fifteen children;
 - d. The operator shall provide separate restrooms for boys and girls and shall ensure that partitions are installed to separate toilets in these restrooms;
 - e. The operator shall provide at least one handwashing sink per toilet room facility; and
 - f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.
24. The operator of a school-age child care program not on a municipal or public water supply or wastewater disposal system shall ensure the school-age child care program's sewage and wastewater system has been approved by the department of environmental quality.
25. Laundry:
 - a. If the school-age child care program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;
 - b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation;
 - c. The operator shall ensure that in all new or extensively remodeled school-age child care programs, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;

- d. The operator shall ensure that in an existing school-age child care program where physical separation of laundry and kitchen areas is impractical, procedures are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
 - e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas;
 - f. If the school-age child care program provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius]; and
 - g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the program shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].
26. The operator shall take steps to keep the school-age child care program free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the school-age child care program. Insect repellent may be applied outdoors on children with written parental permission.
27. Pets and animals:
- a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.

- h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
28. The operator shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the operator shall ensure:
- a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, or cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children;
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.
 - i. That mattresses and sheets are properly fitted.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards, and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a school-age child care program must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. When parents bring sack lunches for their children, the operator shall supplement lunches when necessary to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day. The operator shall serve nutritious meals to children in care during any normal mealtime hour.
4. When the operator is responsible for providing food to children, menus must be prepared on a weekly basis and made available to the parents, the [department or its](#) authorized agent, and other appropriate individuals.
5. The operator shall consider information provided by the children's parents as to the children's eating habits, food preferences, or special needs in creating the feeding schedules and in tailoring menus.

6. The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
7. The operator or staff members may encourage children to eat the food served, but the operator or staff members may not coerce or force-feed children.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; [July 1, 2020](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-28. Child abuse and neglect decisions.

An operator shall ensure safe care for the children receiving services in the school-age child care program.

1. If a services-required decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that a child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator ~~and to the director of the regional human service center or the director's designee for consideration and action on the application or license.~~
2. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the [department or its](#) authorized agent, a department-approved authorization for background check form no later than the first day of employment.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-29. Correction of violations.

1. Within three business days of the receipt of a correction order, the operator shall notify the parents of each child receiving care at the school-age child care program that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the school-age child care program and applicable satellite location until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
 - a. For a violation of North Dakota Century Code section 50-11.1-02.2; subsection 13 of section 75-03-11.1-08; subsection 4 or 5 of section 75-03-11.1-08.4; section

75-03-11.1-09; subsection 2, 3, 10, or 20 of section 75-03-11.1-18; or section 75-03-11.1-23, within twenty-four hours.

- b. For a violation requiring the hiring of a school-age child care program director with those qualifications set forth in section 75-03-11.1-08.1 or a child care supervisor with those qualifications set forth in section 75-03-11.1-08.3, within sixty days.
 - c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11.1-17, within sixty days.
 - d. For a violation that requires substantial building remodeling, construction, or change, within sixty days.
 - e. For all other violations, within twenty days.
3. All time periods for correction begin on the date of receipt of the correction order by the operator.
 4. The ~~regional supervisor of early childhood program services~~ department may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.
 5. The operator shall furnish a written notice to the department or its authorized agent upon completion of the required corrective action. The correction order remains in effect until the department or its authorized agent confirms that the corrections have been made.
 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a school-age child care program that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the school-age child care program has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the school-age child care program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
 7. If a school-age child care program receives more than one correction order in a single year, the department or authorized agent may refer the school-age child care program for consulting services to assist the operator in maintaining compliance to avoid future corrective action.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; July 1, 2020.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

CHAPTER 75-03-12

75-03-12-01. Definitions.

1. "Department" means the North Dakota department of human services.
2. ~~"Regional foster care director" means the regional supervisor of county social services located in the regional human service centers.~~ "Grievance" means an objection made by a licensed foster parent regarding any placement decisions made by the department or human service zone which substantially affects the foster parent or the needs of the foster child.

History: Effective April 1, 1984; amended effective July 1, 2020.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-03. Grievance to be in writing - Contents - Time for filing.

The grievance must be in writing. It must contain a succinct statement of the grievant's reasons for objections to a decision and the grievant's proposed substitute decision. A grievance must be filed with the human service zone director or the director's designee within ten days of the grievant's receipt of the written decision of the department or ~~county social service board~~human service zone.

History: Effective April 1, 1984; amended effective July 1, 2020.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-04. Informal meeting.

1. The agency which has made the grieved decision shall schedule an informal meeting with the foster parents. This meeting shall be held within ten days of receipt of the written grievance. When the decision which is the subject of the grievance is a decision made by a ~~county social service board staff~~human service zone team member, a member of the ~~county social service board~~human service zone shall preside at the informal meeting.
2. The informal meeting may include, but is not limited to upon approval of the agency having care, custody, and control of the foster child, the following participants:
 - a. Foster parents.
 - b. ~~County social service board~~Human service zone team members and staff.
 - c. ~~County~~Human service zone directors.
 - d. ~~State youth authority staff.~~
 - ~~e.~~ Juvenile court staff.
 - ~~f.~~e. State's attorneys.
 - ~~g.~~f. Natural parents of the foster child.
 - ~~h.~~g. Foster child.
 - ~~i.~~h. Staff of the agency having care, custody, and control of the foster child.
 - ~~j.~~i. Any other person having information concerning the decision which is the subject of the grievance.

3. Within two working days after conclusion of the informal meeting, the ~~agency~~human service zone which has made the grieved decision shall prepare a written summary of the meeting and any resolution of the grievance. The summary must be submitted to the grievants for approval and signing. If the grievants do not approve of the summary or any stated resolution, they shall, within two working days of receipt of the agency summary, prepare a written grievants' summary of the meeting and any resolution. If the parties cannot agree to the contents of a summary, the proposed summary of each must be made a part of the record of any formal hearing.

History: Effective April 1, 1984; amended effective July 1, 2020.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-05. Request for formal hearing.

If the grievants and the ~~department or the county social service board~~human service zone do not resolve the grievance at the informal meeting, the grievants may submit a written request for a formal hearing to ~~the regional foster care director~~be held at a conflict-free human service zone office. This request must be received by the ~~regional foster care supervisor~~human service zone director within three working days after receipt by the foster parents of the written summary of the informal meeting.

History: Effective April 1, 1984; amended effective July 1, 2020.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-06. Formal hearing.

1. The ~~department or the county social service board~~human service zone involved shall provide the ~~regional foster care director~~conflict-free human service zone office with pertinent files and records for the review by the ~~regional foster care~~conflict-free human service zone director.
2. The ~~regional foster care~~conflict-free human service zone director, or the director's designee, shall conduct the hearing, swear witnesses, and maintain order.
3. Testimony taken at the hearing shall be preserved by a suitable recording device. Any party may receive a transcribed copy of the testimony upon request and payment of the transcription costs; provided, that the request is received within ninety days of the hearing.
4. The statements received at the hearing must be limited to those probative of the grievance under review.

History: Effective April 1, 1984; amended effective July 1, 2020.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

75-03-12-07. Hearing decision.

The ~~regional foster care~~conflict-free human service zone director shall prepare a written decision upon the files, records, and testimony received at the hearing. The decision constitutes the final determination of the grievance. The findings and conclusions of the ~~regional foster care~~conflict-free human service zone director must be sent to the grievants and the ~~county social service board~~human service zone within five working days of the hearing.

History: Effective April 1, 1984; amended effective July 1, 2020.

General Authority: NDCC 50-11.2-02(5)

Law Implemented: NDCC 50-11.2

CHAPTER 75-03-14

75-03-14-01. Definitions.

Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Background check" means a fingerprint-based criminal history record investigation inclusive of a child abuse and neglect index check in each state or tribal jurisdiction that the individual has resided in the previous five years.
2. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
3. ~~"Regional center" means the regional human service center.~~
4. "Supervising agency" means the ~~agency or person~~ human service zone, division of juvenile services, or tribe having care, custody, and control of the foster child as ordered by a court of competent jurisdiction or the designee of that agency or person.

History: Effective December 1, 1984; amended effective January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-00.1, 50-11-06.8

75-03-14-04. Qualifications of persons residing in the family foster home for children.

1. An applicant for licensure must:
 - (a) Be age twenty-one years or greater;
 - (b) Be financially stable with reasonable income or resources available to the home to properly care for children; and
 - (c) Have functional literacy, demonstrating their ability to read licensing policy, handbook, child care plans, and medication labels.
2. A person residing in the family foster home for children, except a foster child or ward of the court, may not exhibit symptoms of substance abuse or emotional instability that inhibit their ability to care for children.
3. No person may smoke or vape in the family foster home for children, in circumstances which present a hazard to the health of the foster child, or in an enclosed area when the foster child is present. All foster parents must be aware of the potential hazards of smoking in the presence of children, particularly infants and children with respiratory or allergic sensitivity.
4. If symptoms of substance abuse or emotional instability that inhibit the ability to care for children occur in a family foster home for children at a time when a foster child is in placement, every effort should be made to keep the placement intact if the household member is seeking treatment. The supervising agency may make no further placements in that family foster home for children until the household member successfully completes treatment. If a household member has symptoms of substance abuse or emotional instability, the household member may have had no incidents which inhibited their ability to care for children for a period of at least twelve months prior to an applicant obtaining licensure.

5. A member of the household, except a foster child, may not have been the subject of a child abuse or neglect assessment where a services-required decision was made unless the department, after making appropriate consultation with persons qualified to evaluate the capabilities of the household member, documenting criteria used in making the decision, and imposing any restrictions deemed necessary, approves the issuance of a license; and
 - a. The household member has followed the recommendations of the child protection team; or
 - b. The household member can demonstrate the elimination of an underlying basis precipitating the neglect or abuse.
6. Prior to the department approving a license, the applicant shall submit the results of a physical examination dated within twelve months of the date of application. All foster parents, annually thereafter, shall submit a declaration of good health, including all residents of the family foster home for children, except any foster child, in a manner and form required by the department. The authorized agent is the payer of last resort whenever any other benefit or source of third-party payment is available for the cost of any physical examinations required pursuant to this subsection ~~is the responsibility of the authorized agent. Any foster parent continuously licensed prior to October 1, 2019, is exempt from having to submit a declaration of good health.~~
7. The department may require proof of immunizations for all residents living in the family foster home for children, except any foster child. It is recommended all members of the household be up to date on immunizations as recommended by a health care professional, unless the immunization is contrary to the person's health as documented by a licensed health care professional or the person provides written documentation that immunizations are against the person's religious, philosophical, or moral beliefs.
8. The department may require foster parents specializing in the care of medically fragile infants and children to receive specific vaccines if the needs of the child require such precaution, such as influenza or pertussis.
9. The department may require psychological testing of any resident of the family foster home for children as determined necessary. The cost of any psychological testing required pursuant to this subsection is the responsibility of the department.
10. Physical disabilities or age of foster parents do not affect licensing of the family foster home for children provided that the applicant can show that these factors do not significantly inhibit the ability of the foster parents to efficiently carry on the duties required of them.
11. All foster parents or potential parents must demonstrate a working knowledge and comply with the department's approved family foster home for children preservice training competencies.
12. All foster parents or potential parents must demonstrate a working knowledge of the reasonable and prudent parent standard by allowing foster children the opportunity to participate in developmentally and age appropriate activities. All foster parents must engage in the reasonable and prudent parent standard.
13. Fire safety training is required annually.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; April 1, 2016; October 1, 2019; July 1, 2020.

General Authority: NDCC 50-11-03, 50-11-03.4

Law Implemented: NDCC 50-11-02

75-03-14-06. Child and family team meeting.

1. Every foster child shall have a permanency plan reviewed by a child and family team that meets not less than once each quarter in which the ~~county social service board~~, human service zone, division of juvenile services, or tribe acts as a supervising agency to the foster child. ~~The child and family team will be cochaired by the department and the supervising agency director or designee.~~
2. The supervising agency shall invite the foster child's parents, the foster parents, and the guardian ad litem to participate in the child and family team for the foster child unless good cause exists to exclude any person from the planning meeting. The supervising agency shall determine the good cause basis and shall document the basis in the foster child's file.
3. The foster parents shall participate in the child and family team meetings for the foster child. The foster parents shall cooperate in carrying out the objectives and goals of the plan for the foster child in their care. Foster parents may be considered, but are not guaranteed, to be a permanency option for the child. Foster parents shall sign an acknowledgment that federal law establishes a permanency preference for a relative of the foster child.
4. The foster parents, when requested by the supervising agency or the juvenile court, shall provide information concerning the foster child and the child's family.
5. The foster parents and the supervising agency, working in cooperation, must attempt to maintain and improve the relationships between the foster child and the child's family whenever appropriate and possible. The foster parents may not attempt to diminish the relationship between the foster child and the child's parents or between the supervising agency and the foster child.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; October 1, 2019; [July 1, 2020](#).

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

CHAPTER 75-03-18

75-03-18-01. Definitions.

1. "Assessing agency" means the ~~county social service board in the county~~ human service zone where the report of suspected abuse or neglect is assessed, or, in certain instances, ~~a regional human service center. "Assessment" is defined in section 75-03-19-01~~ the department.
2. "Assessment" is the factfinding process designed to provide information which enables a decision to be made that services are required to provide for the protection and treatment of an abused or neglected child.
3. "Decision" means the conclusion that determines whether services are required to provide for the protection and treatment of an abused or neglected child.
- ~~3.4.~~ "Department" means the North Dakota department of human services or its designee.
- ~~4.~~ ~~"Determination" means the decision made by the state child protection team that institutional child abuse or neglect is or is not indicated.~~
5. ~~"Regional human service center" means a facility established according to the provisions of North Dakota Century Code section 50-06-05.3.~~
- ~~6.~~ "Subject" means a person ~~named in a child abuse or neglect report who is suspected as having abused or neglected any child.~~ "Subject" includes:
 - ~~a.~~ A child's parent;
 - ~~b.~~ A child's guardian;
 - ~~c.~~ A child's foster parent;
 - ~~d.~~ An employee of a public or private school or nonresidential child care facility;
 - ~~e.~~ An employee of a public or private residential home, institution, or agency; or
 - ~~f.~~ A person responsible for the child's welfare in a residential setting responsible for the child's welfare as defined by North Dakota Century Code section 50-25.1-02.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-04.1, 50-25.1-05.4

75-03-18-05. Informal meeting.

This chapter shall be construed to encourage informal, mutually consensual meetings or discussions between the subject and the assessing agency ~~or regional human service center.~~ Such informal review will not suspend or extend the time for filing an appeal pursuant to section 75-03-18-04.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-12. Effect of appeal.

Neither a request for appeal under this chapter nor an appeal from that decision under North Dakota Century Code chapter 28-32 shall be construed to suspend the ~~legal effect of an assessment decision~~[requirement to provide services](#) during the time of the appeal until such time as a final decision overturning the case decision has been made and not appealed.

History: Effective November 1, 1994; amended effective January 1, 1996; [July 1, 2020](#).

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

CHAPTER 75-03-18.1

75-03-18.1-01. Definitions.

1. "Department" means the North Dakota department of human services.
2. "Director" means the director of the ~~county social services board, the director of the~~ human service ~~center,~~zone or the director's designee.
3. ~~"Regional representative" means the regional supervisor of child protection services who is located in regional human service centers.~~
- ~~4.~~ "Subject" means a person ~~named in a child abuse or neglect report who is suspected as having abused or neglected any child.~~ "Subject" includes:
 - ~~a.~~ A child's parent;
 - ~~b.~~ A child's guardian;
 - ~~c.~~ A child's foster parent;
 - ~~d.~~ An employee of a public or private school or nonresidential child care facility;
 - ~~e.~~ An employee of a public or private residential home, institution, or agency; or
 - ~~f.~~ A person responsible for the child's welfare in a residential settingresponsible for the child's welfare as defined by North Dakota Century Code section 50-25.1-02.

History: Effective September 1, 1997; amended effective July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-03. Grievance to be in writing - Contents - Time for filing.

1. The grievance must be in writing on forms developed and provided by the department and must contain a succinct statement of the grievant's objections to the conduct of the assessment.
2. A grievance must be filed with the director of the human service zone which provided the written assessment decision notification within ten days of the grievant's receipt of the written decision of the department ~~or county social service board.~~

History: Effective September 1, 1997; July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-04. Grievance meeting.

1. If a grievance is filed, the ~~agency~~human service zone completing the assessment shall schedule a grievance meeting with the subject. This meeting must be held within ten days of the ~~agency's~~director's receipt of the written grievance. The director shall preside at the grievance meeting.
2. At a maximum, the grievance meeting may include the following participants:
 - ~~The regional representative~~An individual designated by the department;
 - Two individuals that the subject determines should be present; and

- c. Up to two ~~agency-selected~~human service zone-selected individuals having information concerning the conduct of the assessment.

History: Effective September 1, 1997; amended effective July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-05. Grievance meeting decision.

Within ten days after conclusion of the grievance meeting, the director ~~of the assessing agency~~ shall prepare a written summary of the meeting and the resolution of the grievance. The written summary must be based on the files, records, and information received at the grievance hearing. The written summary and resolution constitutes the final determination of the grievance. The summary and resolution of the director must be sent to the grievants and the ~~regional representative~~individual designated by the department.

History: Effective September 1, 1997; amended effective July 1, 2020.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

CHAPTER 75-03-19

75-03-19-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-25.1, except:

1. "Assessment" is the ~~factfinding process designed to provide information which enables a decision to be made to provide for the protection and treatment of an abused or neglected child~~ means an alternative response assessment, child protection assessment, and family services assessment as defined in North Dakota Century Code chapter 50-25.1-02.
2. "Decision" means the ~~conclusion that determines whether services are required to provide for the protection and treatment of an abused or neglected child~~ determination made under North Dakota Century Code section 50-25.1-05.1 whether services are required to provide for the protection and treatment of an abused or neglected child.
3. "Department" means the North Dakota department of human services.
4. "Subject" means a ~~person named in a child abuse or neglect report who is suspected as having abused or neglected any child.~~ "Subject" includes:
 - ~~a. A child's parent;~~
 - ~~b. A child's guardian;~~
 - ~~c. A child's foster parent;~~
 - ~~d. An employee of a public or private school or nonresidential child care facility;~~
 - ~~e. An employee of a public or private residential home, institution, or agency; or~~
 - ~~f. A person responsible for the child's welfare in a residential setting~~ responsible for the child's welfare as defined by North Dakota Century code section 50-25.1-02.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; January 1, 1996, amendments voided by Administrative Rules Committee effective August 8, 1996; September 1, 1997; July 1, 2020.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

75-03-19-02. Department's authorized agent to receive reports and conduct assessments - Reimbursement.

The department's authorized agent shall act as designee of the department for the purpose of receiving reports of suspected child abuse or neglect and conducting assessments, except as otherwise provided for by law or as otherwise determined by the department in a particular case. ~~The department shall reimburse such authorized agent, in a reasonable amount determined by the department, to the extent funds are made available to the department for these purposes. An authorized agent may not be required to act as the department's authorized agent if the department is unable to provide reimbursement for services rendered.~~

History: Effective September 1, 1990; amended effective January 1, 1996; July 1, 2006; July 1, 2020.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-02(3), 50-25.1-04, 50-25.1-05, 50-25.1-05.1

75-03-19-04. Time for completing assessments.

Assessments of reports of suspected child abuse or neglect must be completed, a decision made, and a written report completed and submitted to the ~~regional child protection service supervisor or other person~~ individual designated by the department within sixty-two days from the date of receipt of the report unless an extension of the time is requested of and granted by the department.

History: Effective September 1, 1990; amended effective January 1, 1996; July 1, 2006; July 1, 2020.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05

75-03-19-06. Assessment procedures.

Assessments of reports of suspected child abuse or neglect must be conducted by the department or its authorized agents in substantial conformity with the policies of the department. Assessments of reports of suspected child abuse or neglect must reflect:

1. An assessment process designed to collect sufficient information to make a decision whether services are required to provide for the protection and treatment of an abused or neglected child;
2. Assessment techniques that include interviewing and observing the subject, the child victim, and other interested or affected persons and documenting those interviews and observations;
3. Conclusions and a summary based on information gathered by assessment techniques described in subsection 2; and
4. If services are required, development of ~~a~~ treatment ~~plan~~ plans based on goals and objectives established by the department or its ~~designee and~~ authorized agent for the subject and for the family of the child victim.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; July 1, 2006; July 1, 2020.

General Authority: NDCC 50-25.1-05, 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05, 50-25.1-05.4

75-03-19-10. Training requirements.

The department shall maintain a child welfare certification training program to protect the legal rights and safety of children and families. The training curriculum must include the legal duties of child protection services. Each ~~social~~ child protective services worker providing child protection services must complete the first available training program ~~within the first year of employment with child protection services~~ upon hiring, unless otherwise approved by the department.

History: Effective July 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 50-25.1-05

Law Implemented: NDCC 50-25.1-05, 50-25.1-11

CHAPTER 75-03-21

75-03-21-02. Application.

1. An application for a license to operate a facility must be made to the ~~county agency in the county where the applicant proposes to provide care~~department.
2. An application must be made in the form and manner prescribed by the department.
3. ~~A fee of fifty dollars must accompany the application for an initial license to operate a facility. A fee of twenty-five dollars must accompany the application to renew a license to operate a facility. The fees will be retained by the county agency and used for training and education of the county agency staff who administer the license program.~~

~~4.~~ An application for a license must be filed immediately upon change of provider or location.

- 5.4. An application is not complete until all required information and verifications are submitted to the department, including:
- a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
 - b. A self-declaration of medical history and, when requested by the department, a report of a physician's examination;
 - c. A report of psychological examinations, when requested by the department;
 - d. Proof of age and relationship, when requested by the department;
 - e. Sanitation and safety inspection reports, when requested by the department;
 - f. Completed application form;
 - g. Drug and alcohol evaluation report, when requested by the department;
 - h. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;
 - i. Documentation of completion of a course related to fire prevention and safety;
 - j. Fire safety self-declaration form;
 - k. Evidence that all caregivers are properly qualified to provide care as provided in section 75-03-21-08;
 - l. A successfully completed criminal background check as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9;
 - m. Examples of service logs to be used to account for service time and tasks performed for each resident;
 - n. An evacuation disaster plan; and
 - o. A sample menu plan compliant with dietary guidelines outlined in subsection 4 of section 75-03-21-11.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020.

General Authority: NDCC 50-06-16, 50-11

75-03-21-09.1. Criminal conviction - Effect on licensure and operation of a facility.

1. An applicant may not be an individual who has, and may not permit an individual, except a resident, to reside in the facility or act as a caregiver in the facility if the individual has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code ~~chapters~~chapter 12.1-16, homicide; ~~12.1-17, assaults—threats—coercion—harassment; or~~ 12.1-18, kidnapping; 12.1-27.2, sexual performance by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code ~~sections~~section 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; ~~12.1-20-11, incest; 12.1-20-12.1, indecent exposure; 12.1-20-12.2, surreptitious intrusion; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson;~~ 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; North Dakota Century Code sections~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; ~~or~~12.1-31-07, endangering an eligible adult; 12.1-31-07.1, exploitation of ~~a vulnerable~~eligible adult; ~~North Dakota Century Code chapter 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or North Dakota Century Code sections~~ 14-09-22, abuse of child; ~~or~~ 14-09-22.1, neglect of child; subsection 1 of section 26.1-02.1-02.1, fraudulent insurance acts; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or
 - b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.
2. For purposes of subdivision b of subsection 1, the department ~~shall~~:
 - a. May not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation; and
 - b. Shall treat completion of a period of ~~five~~three years after final discharge or release from any term of probation, parole, or other form of community corrections, or from imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
3. In the case of an offense described in North Dakota Century Code section 12.1-17-01, simple assault, if a felony; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence, if a misdemeanor; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-18-03, unlawful imprisonment; 12.1-20-05, corruption or solicitation of minors, if a misdemeanor; 12.1-20-07, sexual assault, if a misdemeanor; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been

sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent convictions.

4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on an individual's ability to serve the public in any capacity involving the provision of foster care to adults.

History: Effective April 1, 1999; amended effective September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11

75-03-21-13. Termination of care.

1. The provider shall terminate care of a resident when care is no longer required or when the provider is no longer qualified to provide the care needed by the resident.
2. The provider who anticipates the termination of care to a resident shall provide the resident, or the resident's legal representative, and the department with at least thirty days' written notice of the termination. The provider shall assist with the transfer of the resident to a setting more appropriate to the resident's needs. The provider also shall comply with the provider's service and rental agreement and landlord tenant eviction laws.
3. If an emergency placement outside of the facility is needed or a resident is hospitalized and the resident's condition has changed to the extent that the provider is no longer able to provide the resident's care, consideration will be given to waiving the thirty-day written notice required under subsection 2 provided keeping the resident or returning the resident to the facility would negatively impact the health and well-being of the resident, other residents living in the facility, or the provider. ~~The department staff responsible for licensing must be contacted by the county agency prior to the department making the decision to waive the thirty-day requirement.~~

History: Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012; October 1, 2016; July 1, 2020.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

CHAPTER 75-03-23

75-03-23-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-06.2. In addition, as used in this chapter:

1. "Activities of daily living" means the daily self-care personal activities that include bathing, dressing or undressing, eating or feeding, toileting, continence, transferring in and out of bed or chair or on and off the toilet, and mobility inside the home.
2. "Adaptive assessment" means an evaluation to identify adaptive devices, equipment, or modifications that enhance the independence and functional capabilities of an individual who may otherwise be unable to remain in the individual's home.
3. "Aged" means sixty-five years of age or older.
4. "Client" means an individual who meets the eligibility requirements and is receiving services reimbursed under North Dakota Century Code chapter 50-06.2 or this chapter.
5. "Congenital disability" means a disability that exists at birth or shortly thereafter, and is not attributable to a diagnosis of either mental retardation or a closely related condition of mental retardation.
6. "Department" means the North Dakota department of human services.
7. "Designee" means a person that enrolls as a qualified service provider to provide case management services for the Medicaid waiver program.
8. "Disability due to trauma" means a disability that results from an injury or assault to the body by an external force.
- ~~8:9.~~ "Disability that is acquired" means a disability that results from an assault that occurs internally within the body.
- ~~9:10.~~ "Disabled" means under age sixty-five with a congenital disability, a disability due to trauma, or a disability that is acquired.
- ~~10:11.~~ "Functional assessment" means an instrument used to record basic demographic and medical information about an individual, including age, date of birth, spoken language, marital status, individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:
 - a. Physical health;
 - b. Cognitive and emotional functioning;
 - c. Activities of daily living;
 - d. Instrumental activities of daily living;
 - e. Informal supports;
 - f. Need for twenty-four-hour supervision;
 - g. Social participation;
 - h. Physical environment;

- i. Financial resources;
- j. Adaptive equipment;
- k. Environmental modification; and
- l. Other information about the individual's condition not recorded elsewhere.

- | ~~41.12.~~ "Functional impairment" means the inability to perform, either by oneself or with adaptive aids or with human help, specific activities of daily living or instrumental activities of daily living.
- | ~~42.13.~~ "Home and community-based services" means the array of services under the SPED program and Medicaid waiver defined in the comprehensive human service plan and the other services the department determines to be essential and appropriate to sustain individuals in their homes and in their communities, and to delay or prevent institutional care.
- | ~~43.14.~~ "Institution" means a hospital, swing bed facility, nursing facility, or other provider-operated living arrangement receiving prior approval from the department.
- | ~~44.15.~~ "Instrumental activities of daily living" means activities requiring cognitive ability or physical ability, or both. Instrumental activities of daily living include preparing meals, shopping, managing money, housework, laundry, taking medicine, transportation, using the telephone, and mobility outside the home.
- | ~~45.16.~~ "Medicaid waiver program" means the federal Medicaid waiver for the aged and disabled program, as defined in subpart G of 42 CFR 441, under which the department is authorized to provide specific home and community-based services to aged and disabled persons who are at risk of being institutionalized.
- | ~~46.17.~~ "Sanction" means an action taken by the department against a qualified service provider for noncompliance with a federal or state law, rule, or policy, or with the provisions of the Medicaid provider agreement.
- | ~~47.18.~~ "Service fee" means the amount a SPED client is required to pay toward the cost of the client's SPED services.
- | ~~48.19.~~ "Service payment" means the payment issued by the department to a qualified service provider for the provision of authorized home and community-based services to eligible aged and disabled persons.
- | ~~49.20.~~ "SPED program" means the service payments for elderly and disabled program, a state program which authorizes the department to reimburse qualified service providers for the provision of covered home and community-based services to eligible aged and disabled individuals.
- | ~~20.21.~~ "SPED program pool" means the list maintained by the department which contains the names of clients for whom SPED program funding is available when the clients' names are transferred from the SPED program pool to SPED program active status.

History: Effective June 1, 1995; amended effective January 1, 2009; October 1, 2014; January 1, 2018; January 1, 2020; [July 1, 2020](#).

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

75-03-23-03. Eligibility determination - Authorization of services.

- | 1. ~~The department shall provide written notice to the department's designee of the effective date of the applicant's eligibility for services funded under the SPED program.~~

~~2.~~ A person transferred to SPED program active status from the SPED program pool shall continue to meet the eligibility criteria of section 75-03-23-02 in order to remain eligible for services funded under the SPED program.

~~3.2.~~ The ~~department's designee~~ department is responsible for:

- a. Verifying that the person transferred to active status continues to meet the eligibility criteria for placement into the SPED program pool;
- b. Developing a care plan;
- c. Authorizing covered services in accordance with department policies and procedures;
- d. Verifying the financial eligibility criteria in relation to income, assets, and deductions; and
- e. Assuring that other potential federal and third-party funding sources for similar services are sought first.

~~4.3.~~ A recipient of services under the Medicaid waiver program, who becomes ineligible for the Medicaid waiver program because evaluation shows that the recipient no longer requires a nursing facility level of care, does not have to go through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.

~~5.4.~~ A recipient of services under the Medicaid personal care service option, who becomes ineligible for services under the Medicaid personal care service option, does not have to go through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.

~~6.5.~~ A recipient of services under the expanded service payments for elderly and disabled program, who becomes ineligible for services under the expanded service payments for elderly and disabled program, does not have to go through the SPED program pool to receive services through the SPED program provided the recipient meets all eligibility criteria in section 75-03-23-02.

~~7.6.~~ An individual who is discharged from an inpatient hospital stay, skilled nursing facility, swing-bed facility, long-term care facility, or basic care facility or who has been off of the SPED program for fewer than sixty days, does not have to go through the SPED program pool to receive services through the SPED program provided the individual meets all eligibility criteria in section 75-03-23-02.

History: Effective June 1, 1995; amended effective January 1, 2009; July 1, 2020.

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-01(3), 50-06.2-03(5)

75-03-23-11. Denial, reduction, and termination of services - Appeal.

1. The ~~department's~~ department or its designee shall inform a person who is determined to be ineligible for covered services or who becomes ineligible while receiving services in writing of the denial, termination, or reduction, the reasons for the denial, termination, or reduction, the right to appeal, and the appeal process as provided in chapter 75-01-03.
2. A client must receive ten calendar days' written notice before termination of services occurs. The ten-day notice is not required if:
 - a. The client enters a basic care facility or a nursing facility;
 - b. The termination is due to changes in federal or state law;

- c. The client requests termination of services; or
 - d. The client moves from the service area.
3. An applicant denied services or a client terminated from services should be given an appropriate referral to other public or private service providers and should be assisted in finding other resources.
 4. ~~For denial or termination of services, a review of the decision by the county social service board director or the designee may be requested. A request for review does not change the time within which the request for an appeal hearing must be filed.~~
 - ~~5.~~ The department shall deny or terminate SPED program and Medicaid waiver program services when service to the client presents an immediate threat to the health or safety of the client, the provider of services, or others or when services that are available are not adequate to prevent a threat to the health or safety of the client, the provider of services, or others. Examples of health and safety threats include physical abuse of the provider by the client, client self-neglect, an unsafe living environment for the client, or contraindicated practices, like smoking while using oxygen.

History: Effective June 1, 1995; amended effective January 1, 2009; [July 1, 2020](#).

General Authority: NDCC 50-06.2-03(6)

Law Implemented: NDCC 50-06.2-03(5), 50-06.2-03(6), 50-06.2-04(1), 50-06.2-04(3)

75-03-23-15. Application - Applicant required to provide proof of eligibility.

1. An individual wishing to apply for benefits under this chapter must have the opportunity to do so, without delay.
2. An application is a request made to the department or its designee by an individual seeking services under this chapter, or by an individual properly seeking services on behalf of another individual. "An individual properly seeking services" means an individual of sufficient maturity and understanding to act responsibly on behalf of the individual for whom services are sought.
3. An application must include a functional assessment.
4. The individual seeking services under this chapter, or an individual properly seeking services on behalf of that individual, shall sign the application.
5. The department or its designee shall provide information concerning eligibility requirements, available services, and the rights and responsibilities of individuals seeking services under this chapter and of recipients to all who require it.
6. The date of application is the date the department or ~~the department's~~[its](#) designee receives the properly signed application.
7. The individual seeking services under this chapter shall provide information sufficient to establish eligibility for benefits, including a social security number and proof of age, identity, residence, blindness, disability, functional limitation, financial eligibility, and other information required under this chapter.

History: Effective October 1, 2014; [amended effective July 1, 2020](#).

General Authority: NDCC 50-06.2-03

Law Implemented: NDCC 50-06.2-03

CHAPTER 75-03-24

75-03-24-01. Definitions.

For purposes of this chapter, unless the context requires otherwise:

1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.
2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
3. "Department" means the department of human services.
4. ~~"Department's designee" means the county social service board.~~
- ~~5.~~ "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
- ~~6.5.~~ "Ex-SPED program pool" means the list maintained by the department which contains the names of clients for whom ex-SPED program funding is available when the clients' names are transferred from the ex-SPED program pool to ex-SPED program active status.
- ~~7.6.~~ "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more individuals who are not related to the proprietor.
- ~~8.7.~~ "Instrumental activities of daily living" means activities to support independent living, including housekeeping, shopping, laundry, transportation, and meal preparation.

History: Effective April 1, 2012; [amended effective July 1, 2020.](#)

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

75-03-24-03. Eligibility determination - Authorization of services.

1. The department ~~shall provide written notice to the department's designee of the effective date of the applicant's eligibility for services funded under the ex-SPED program.~~
- ~~2.~~ ~~The department's designee~~ is responsible for:
 - a. Verifying that the person transferred to active status continues to meet the eligibility criteria for placement into the ex-SPED program pool;
 - b. Developing a care plan;
 - c. Authorizing covered services in accordance with department policies and procedures; and
 - d. Assuring that other potential federal and third-party funding sources for similar services are sought first.
- ~~3.2.~~ An individual who is discharged from an inpatient hospital stay, skilled nursing facility, swing-bed facility, long-term care facility, or basic care facility or who has been off the ex-SPED program for fewer than 60 days, does not have to go through the ex-SPED program pool to receive services through the ex-SPED program provided the individual meets all eligibility criteria in section 75-03-24-02.

History: Effective April 1, 2012; [amended effective July 1, 2020](#).

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

75-03-24-04. Application.

1. All individuals wishing to make application for benefits under this chapter must have the opportunity to do so, without delay.
2. An application is a request made by an individual desiring benefits under this chapter, or by a proper individual seeking such benefits on behalf of another individual, to ~~a department's designee~~ [the department](#). A proper individual means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
3. An application consists of an application for services, which includes a functional assessment.
4. Application forms must be signed by the applicant, an authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant.
5. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.
6. The date of application is the date an application, signed by an appropriate individual, is received by the ~~department's designee~~ [department](#).

History: Effective April 1, 2012; [amended effective July 1, 2020](#).

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

75-03-24-08. Residency.

For purposes of this chapter:

1. An individual is a resident of this state if the individual is not living in an out-of-state institution and is living in this state:
 - a. With intent to remain in this state permanently or for an indefinite period; or
 - b. Without intent if the individual is incapable of stating intent.
2. An individual who is a resident of this state is a resident of the ~~county~~ [human service zone](#) in which the individual is a resident for purposes of receipt of benefits under North Dakota Century Code chapter 50-01.

History: Effective April 1, 2012; [amended effective July 1, 2020](#).

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

75-03-24-09. Denial, reduction, and termination of services - Appeal.

1. The ~~department's designee~~ [department](#) shall inform a person who is determined to be ineligible for covered services or who becomes ineligible while receiving services in writing of the denial, termination, or reduction, the reasons for the denial, termination, or reduction, the right to appeal, and the appeal process as provided in chapter 75-01-03.
2. A client must receive ten calendar days' written notice before termination of services occurs. The ten-day notice is not required if:

- a. The client enters a basic care facility or a nursing facility;
 - b. The termination is due to changes in federal or state law;
 - c. The client requests termination of services;
 - d. The client moves from the service area; or
 - e. The client is deceased.
3. An applicant denied services or a client terminated from services should be given an appropriate referral to other public or private service providers and should be assisted in finding other resources.
 4. ~~For denial or termination of services, a review of the decision by the county social service board director or the director's designee may be requested. A request for review does not change the time within which the request for an appeal hearing must be filed under chapter 75-01-03.~~
 - ~~5.~~ The department shall deny or terminate ex-SPED program services when service to the client presents an immediate threat to the health or safety of the client, the provider of services, or others or when services that are available are not adequate to prevent a threat to the health or safety of the client, the provider of services, or others. Examples of health and safety threats include physical abuse of the provider by the client, client self-neglect, an unsafe living environment for the client, or contraindicated practices, like smoking while using oxygen.
 - ~~6.5.~~ Errors made by public officials and delays caused by the actions of public officials do not create eligibility and may not form the basis for the award of any benefit to an adversely affected applicant or recipient who would not otherwise be eligible to receive that benefit.

History: Effective April 1, 2012; [amended effective July 1, 2020.](#)

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

75-03-24-10. Payment under the ex-SPED program.

1. Payment for ex-SPED services may only be made to an enrolled qualified service provider who meets the standards described in chapter 75-03-23.
2. The department shall establish provider rates for home and community-based services in accordance with a procedure that factors in:
 - a. Whether a provider is an individual or an agency; and
 - b. The range of rates submitted by various providers.
3. The rate for a specific qualified service provider is established at the time the provider agreement is signed.
4. The department shall grant a request for a rate decrease when the department receives a written request for the decrease from the qualified service provider.
5. The department shall grant in full or in part, or shall deny, a request for a rate increase, when the department receives a written request for the rate increase from the qualified service provider.
6. The department shall determine the maximum amount allowable per client each month for a specific service.

7. The department shall establish the aggregate maximum amount allowable per client each month for all services.
8. The department may grant approval to exceed the monthly service program maximum for a specific client who is only receiving ex-SPED funds if:
 - a. The client has a special or unique circumstance; and
 - b. The need for additional service program funds will not initially exceed three months. Under emergency conditions, the department may grant a one-time extension not to exceed an additional three months.
9. The ~~department's designee~~department shall notify the client of the department's determination regarding the request to exceed the monthly service program maximum. If the department denies the request to exceed the monthly aggregate maximum, the ~~department's designee~~department shall inform the client in writing of the reason for the denial, the client's right to appeal, and the appeal process, as provided in chapter 75-01-03.
10. The department will grant approval to exceed the monthly program maximum or service maximum for individuals receiving ex-SPED funds whose service units exceed the program caps as a result of the qualified service provider rate increase. This extension is limited to individuals who were receiving services prior to July 1, 2007.

History: Effective April 1, 2012; amended effective July 1, 2020.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

75-03-24-12. Administration.

The ~~department's designee of the county where the applicant or recipient is living~~department must be responsible for the administration of the program with respect to that applicant or recipient.

History: Effective April 1, 2012; amended effective July 1, 2020.

General Authority: NDCC 50-24.7-02

Law Implemented: NDCC 50-24.7

CHAPTER 75-03-36

75-03-36-01. Definitions - Application.

1. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-12. In addition, as used in this chapter:
 - a. "Adoption disruption" means an interruption of an adoption prior to finalization in which the child is returned to foster care or placed with another family.
 - b. "Adoption services" is a coordinated program of services for the child, the child's birth parents, and the adoptive applicants and adoptive parents.
 - c. "Authorized agent" means the human service zone, unless another entity is designated by the department.
 - d. "Department" means the North Dakota department of human services.
 - e. "Family foster home" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the home to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply. For the purposes of this subsection, foster care for children applies to those agencies placing children that are in the custody of a human service zone, a tribe, or the state in family foster homes.
 - f. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family.
 - g. "Legal risk adoptive placement" means placement of a child with a prospective adoptive family when the child is not legally free for adoption.
 - h. "Life book" means a tool used with children in out-of-home care and children who have been adopted to record memories and life events as they move to different placements.
 - i. "Permanent adoption record" means all paper, records, and identifying and nonidentifying information related to an adopted individual, birth siblings, birth parents, or adoptive parents which pertains to an adoption.
 - j. ~~"Regional supervisor" means the regional supervisor of county social services located in each of the eight regional human service centers.~~
 - ~~k.~~ "Resident child-placing agency" means a child-placing agency that maintains an office within this state.
2. In these rules, the requirements for licensure for a child-placing agency apply to a new application for licensure as well as to an application for relicensure unless the context otherwise specifically implies.

History: Effective April 1, 2010; amended effective April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-13. Criminal conviction - Effect on licensure.

1. A prospective adoptive parent or any adult living in the prospective adoptive parent home may not be approved for the adoption of a child, or a child-placing agency owner may not be known to have, and a child-placing agency may not employ an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or ~~12.1-40, human trafficking~~ 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; ~~or 12.1-31-07, endangering an eligible adult~~; 12.1-31-07.1, exploitation of an eligible adult; 14-09-22, abuse ~~or neglect~~ of a child ~~or 14-09-22.1, neglect of a child~~;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without a subsequent charge or conviction, has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity as an adoptive home placement and as an owner or employee of a child-placing agency.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.
4. The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based

criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

6. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - c. Discovered by the child-placing agency, authorized agent, or department as a result of a background check.
7. A child-placing agency shall establish written policies and engage in practices that conform to those policies to effectively implement this section, and North Dakota Century Code sections 50-11.3-02 and 50-12-03.2.
8. A child-placing agency shall establish written policies specific to how the child-placing agency will proceed if a current employee or volunteer is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective April 1, 2010; amended effective April 1, 2016; [July 1, 2020](#).

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12, 50-11.3

75-03-36-17. Critical incident reporting.

The child-placing agency shall have written policy outlining the critical incident recording and reporting process to the ~~regional supervisor~~[department](#), and parent or custodian of the child, if any, when any of the following occurs:

1. An incident requires the services of law enforcement, including in the case of a runaway or an absent child;
2. A serious injury or trauma of a child in foster care, including a child placed for adoption, that requires the services of a medical practitioner;
3. Damage to a foster parent's home which could affect compliance with licensing standards, including damage caused by fire, natural disaster, or other incident, which would cause any kind of major structural damage affecting the safety or shelter of the child or children in foster care;
4. Extended failures that are not repairable within a twenty-four-hour period, including heating, electrical, plumbing, or safety warning in the foster home or the home in which the child is placed for adoption;
5. The death of a child placed in a home by the child-placing agency;
6. Any attempt at suicide by a child placed in a foster home, including a child placed for adoption, by the licensed child-placing agency;
7. Pregnancy of a child placed in a foster home, including a child placed for adoption;
8. Criminal activity by the foster or adoptive parent;
9. An assault on a staff person or family foster home member by a foster child that requires medical attention by a medical practitioner;

10. Outbreak of a serious communicable disease;
11. Any condition requiring closure of the child-placing agency or family foster home; and
12. Any behavior involving a foster child, including a child placed for adoption, that results in a serious threatening situation of harm to the family members, staff, or other foster children.

History: Effective April 1, 2010; [amended effective July 1, 2020](#).

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

75-03-36-32. Case plan for adoption.

1. The child-placing agency shall develop a written case plan for each client. The case plan must include a description of specific services to be provided and must include goals and the time frames for meeting those goals.
2. The child-placing agency shall review the case plan periodically.
3. The child-placing agency shall develop the case plan cooperatively with the client, including with a child when developmentally appropriate.
4. The case plan must be signed and dated by the client.
5. The case plan must be signed and dated by the case manager.
6. For a child in the custody of ~~county social services~~ [a tribe](#) or ~~the department~~ [a human service zone](#), the case plan must be directed by the child's child and family team.
7. For a child in the custody of the child-placing agency, the child-placing agency may direct the case plan.
8. For a child in the custody of a birth or adoptive parent, the legal custodial parent may direct the case plan.

History: Effective April 1, 2010; [amended effective July 1, 2020](#).

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

CHAPTER 75-03-43
CERTIFIED PEER SUPPORT SPECIALISTS

Section

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75-03-43-01. Definitions.

For the purposes of this chapter:

1. "Certified peer support specialist I" means a peer support specialist who has been approved by the division as certified in North Dakota as a certified peer support specialist I.
2. "Certified peer support specialist II" means a peer support specialist who has been approved by the division as certified in North Dakota as a certified peer support specialist II.
3. "Department" means the North Dakota department of human services.
4. "Division" means the behavioral health division.
5. "Peer support specialist" means an individual who uses the individual's lived experience and skills learned through formal training to deliver services to promote mind-body recovery and resiliency.
6. "Recovery" means a process of change through which individuals improve the individual's health and wellness, live self-directed lives, and strive to reach the individual's potential.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

75-03-43-02. Eligibility.

1. An applicant shall meet the following criteria to be eligible to become a certified peer support specialist I:
 - a. Self-identify as an individual who has personal lived experience and is willing to publicly identify as an individual in recovery from a mental health disorder, substance use disorder, traumatic brain injury, or any combination thereof; or a family member who has personal lived experience with an individual with a mental health disorder, substance use disorder, traumatic brain injury, or any combination thereof;
 - b. At least eighteen years of age;
 - c. Currently resides or is employed within the state;

d. Have a high school diploma, general equivalency diploma, or can demonstrate the ability to read and write at a level proficient for training, documentation, and the type of work peer support will require; and

e. Successfully complete a division-approved peer support training program.

2. An applicant shall meet the following criteria to be eligible to become a certified peer support specialist II:

a. Self-identify as an individual who has personal lived experience and is willing to publicly identify as an individual in recovery from a mental health disorder, substance use disorder, traumatic brain injury, or any combination thereof; or a family member who has personal lived experience with an individual with a mental health disorder, substance use disorder, traumatic brain injury, or any combination thereof;

b. At least eighteen years of age;

c. Currently resides or is employed within the state;

d. Have a high school diploma or general equivalency diploma or can demonstrate the ability to read and write at a level proficient for training, documentation, and the type of work peer support will require;

e. Successfully complete a division approved peer support training program; and

f. Applicant has at least one thousand five hundred direct service hours as a peer support specialist.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

75-03-43-03. Application for certification of certified peer support specialist I.

1. An applicant shall submit a signed application for certification and all required information and documentation for certification in the form and manner prescribed by the division, along with:

a. Proof of successful completion of division-approved peer support training;

b. Three letters of recommendation:

(1) One personal recommendation;

(2) One professional recommendation; and

(3) One recommendation that demonstrates the applicant's commitment to the applicant's or family member's recovery process;

c. A personal statement that must detail how the applicant will use the individual's lived experience to benefit others through a peer relationship; and

(1) The applicant's commitment to the recovery process, including information establishing a continued recovery for a year or longer; or

(2) The applicant's commitment to the individual's family member's recovery process, including information establishing a period of recovery support for a year or longer;

d. A signed North Dakota certified peer support specialist code of ethics;

e. A nonrefundable application fee of fifty dollars; and

f. The requirements of section 75-03-43-02.

2. The division shall consider an application for certification complete when it has received all information and documentation required under this section and section 75-03-43-02. The division shall notify an applicant if an application for certification is incomplete. The division may declare an application for certification withdrawn if an applicant fails to submit all required information and documentation within thirty days of the division's notification to the applicant that the application for certification is incomplete.

3. Upon receipt of a completed application for certification, the division shall review and determine an approval or denial of certification based on whether the applicant has submitted information to satisfy the eligibility and application for certification requirements under this section and section 75-03-43-02.

4. An applicant may appeal a decision to deny an application for certification by completing a written appeal with the department within thirty days of the decision. Upon receipt of a timely appeal, an administrative hearing must be governed by the provisions of chapter 75-01-03.

5. Applications for certification and all accompanying materials are subject to the open records requirements of North Dakota Century Code chapter 44-04.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

aw Implemented: NDCC 50-06-41.1

75-03-43-04. Application for certification of certified peer support specialist II.

1. An applicant shall submit a signed application for certification and all required information and documentation for certification in the form and manner prescribed by the division, along with:

a. Proof of successful completion of division-approved peer support supervision training;

b. Two letters of recommendation:

(1) One personal recommendation; and

(2) One professional recommendation;

c. A personal statement that must detail how the applicant will provide direction, develop competence, skills, and ethical expertise in a collaborative manner with certified peer support specialists I;

d. A nonrefundable application fee of fifty dollars; and

e. The requirements of section 75-03-43-02.

2. The division shall consider an application for certification complete when it has received all information and documentation required under this section and section 75-03-43-02. The division shall notify an applicant if an application for certification is incomplete. The division may declare an application for certification withdrawn if an applicant fails to submit all required information and documentation within thirty days of the division's notification to the applicant that the application for certification is incomplete.

3. Upon receipt of a completed application for certification, the division will review and determine an approval or denial of certification based on whether the applicant has submitted information

to satisfy the eligibility and application for certification requirements under this section and section 75-03-43-02.

4. An applicant may appeal a decision to deny an application for certification by completing a written appeal with the department within thirty days of the decision. Upon receipt of a timely appeal, an administrative hearing must be governed by the provisions of chapter 75-01-03.
5. Applications for certification and all accompanying materials are subject to the open records requirements of North Dakota Century Code chapter 44-04.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

75-03-43-05. Certification.

1. Certifications are effective when approved by the division and the certificate has been issued to the certified peer support specialist I or II.
2. Certificates are effective for a period of two years.
3. Certificates expire at midnight of the expiration date provided on the certification.
4. A certified peer support specialist I or II shall inform the division of any changes in personal information within sixty days.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

75-03-43-06. Recertification.

1. To renew a certification, a certified peer support specialist I shall submit an application for recertification, along with all required supporting information and documentation in the form and manner prescribed by the division. Application for recertification will be accepted within ninety days of expiration of current certificate. Information required for recertification includes:
 - a. A personal statement that must include the applicant's experience as a certified peer support specialist I, and how the applicant will continue to use the individual's lived experience to benefit through a peer relationship. The statement must:
 - (1) Demonstrate the applicant's commitment to the recovery process, including information establishing a period of continued recovery for a year or longer; or
 - (2) Demonstrate the applicant's commitment to an individual family member's recovery process;
 - b. A signed North Dakota certified peer support specialist code of ethics;
 - c. Evidence of compliance with section 75-03-43-02; and
 - d. A nonrefundable application fee of fifty dollars.
2. To renew a certification, a certified peer support specialist II shall submit an application for recertification, along with all required supporting information and documentation in the form and manner prescribed by the division. Application for recertification will be accepted within ninety days of expiration of current certificate. Information required for recertification includes:

- a. A personal statement that must detail the applicant's experience as a peer support specialist II and how the applicant will continue to provide direction, develop competence, skills, and ethical expertise in a collaborative manner with certified peer support specialists I;
 - b. A signed North Dakota certified peer support specialist code of ethics;
 - c. Evidence of compliance with section 75-03-43-02; and
 - d. A nonrefundable application fee of fifty dollars.
3. If a certified peer support specialist I or II does not submit an application for recertification, the individual shall not be eligible to practice as a certified peer support specialist I or II after the individual's certification has expired. The division may extend the renewal deadline for an applicant who has proof of a hardship as recognized by the division. The decision to deny a request for extension is not an appealable decision.
 4. The division shall consider an application for recertification complete when it has received all information and documentation required under this section and section 75-03-43-02. The division shall notify a certified peer support specialist I or II if an application for recertification is incomplete. The division may declare an application for recertification withdrawn if a certified peer support specialist I or II fails to submit all required information and documentation within thirty days of the division's notification to the certified peer support specialist I or II that the application for recertification is incomplete.
 5. Upon receipt of a completed application for recertification, the division shall review and determine an approval or denial of recertification based on whether the certified peer support specialist I or II has submitted information to satisfy the eligibility and application for recertification requirements under this section and section 75-03-43-02.
 6. A certified peer support specialist I or II may appeal a decision to deny an application for recertification by completing a written appeal with the department within thirty days of the decision. Upon receipt of a timely appeal, an administrative hearing must be governed by the provisions of chapter 75-01-03.
 7. Applications for recertification and all accompanying materials are subject to the open records requirements of North Dakota Century Code chapter 44-04.
 8. If a certified peer support specialist I or II certification lapses, the applicant shall apply for certification under the provisions of section 75-03-43-03.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

75-03-43-07. Continuing education.

1. Twenty hours of continuing education are required for a two-year certification period. At least two hours of continuing education must be on the topic of peer support specialist ethics. No more than four hours of continuing education can be completed by self-study or distance learning methods unless an exception is granted by the division. If a certified peer support specialist I or II is certified in July or later of a calendar year, the two-year continuing education reporting cycle begins the following year. The division may require evidence that an applicant for recertification has completed continuing education requirements.

2. A certified peer support specialist II shall complete all continuing education requirements as outlined in subsection 1 along with four additional hours of training specific to supervision of peer support specialists.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

75-03-43-08. Revocation and complaints.

1. The division may revoke the certification of a peer support specialist based on a determination that it is necessary to protect the welfare, health, and safety of the residents of the state.
2. Formal complaints against a certified peer support specialist may be made to the division. There is no provision for anonymous complaints.
3. A peer support specialist may reapply for certification, pursuant to section 75-03-43-06, no sooner than one hundred eighty days after determination of revocation.
4. A peer support specialist may appeal a decision to revoke a certification by completing a written appeal with the department within thirty days of the decision. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

75-03-43-09. Reciprocity.

A certified peer support specialist from another state may obtain certification in this state if the department has entered into a reciprocity agreement with the state that issued the individual's certificate.

History: Effective July 1, 2020.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06-41.1

ARTICLE 75-05
HUMAN SERVICE CENTER LICENSURE STANDARDS

Chapter	
75-05-00.1	Human Service Center Licensure
75-05-01	Administration and Center Management
75-05-02	Physical Plant Management [Repealed]
75-05-03	Clinical Services
75-05-04	Client Management
75-05-05	Specialized Services <u>[Repealed]</u>
75-05-06	Human Service Center Essential Client Services and Eligibility [Repealed]

CHAPTER 75-05-00.1

75-05-00.1-05. Licensure team.

The chairperson designated under section 75-05-00.1-04 shall develop a licensure team to conduct onsite reviews at each regional human service center. The licensure team must be composed, at a minimum, of the following individuals:

1. A psychologist or a psychiatrist;
2. A psychiatric nurse, clinical nurse specialist, ~~or nurse practitioner~~, or registered nurse;
3. ~~A representative from the aging services division;~~
- ~~4. A representative from the children and family services division;~~
- ~~5. A representative from the developmental disabilities division;~~
- ~~6. Two representatives from the behavioral health division ~~of mental health and substance abuse services~~, one representing mental health services and one representing substance ~~abuse~~use disorder services;~~
- ~~7. A representative from the vocational rehabilitation services division; and~~
- ~~8.4.~~ A regional human service center consumer or a member of the consumer's family.

History: Effective February 1, 1996; amended effective January 1, 2009; July 1, 2020.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-06. Programs and services reviewed.

The licensure team shall review the following major programs and services:

1. Clinical services;
2. ~~Consumer~~Client management; and
3. ~~Specialized services~~Administration and center management.

History: Effective February 1, 1996; amended effective January 1, 2009; July 1, 2020.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-07. Licensure team reporting procedures.

—1. At the conclusion of the review, each team member shall write a report on the programs and services reviewed. Each report must contain:

- a.1. A description of programs and services reviewed;
- b.2. Strengths;
- c.3. Concerns;
- d.4. Conditions; and
- e.5. Recommendations.-

—2. ~~A member not onsite for the core review shall issue a report that coincides with the time frame of the overall licensure team report. The member's report is due on the date specified by the chairperson of the licensure team.~~

History: Effective February 1, 1996; amended effective January 1, 2009; [July 1, 2020](#).

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-09. Action on conditions.

1. A human service center receiving a condition shall submit to the licensure team a corrective action plan within thirty days from receipt identifying how the program will become compliant with the standards contained in this article; and

2. The human service center shall have ~~ninety~~sixty days ~~to satisfy the cited condition or to develop and~~after the corrective action plan is submitted to implement ~~a plan to satisfy the cited condition~~the actions to become compliant with the standards contained in this article.

History: Effective February 1, 1996; [amended effective July 1, 2020](#).

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-10. Provisional or restricted license.

If the human service center, for reasons beyond its control, is unable to satisfy the cited condition, or if the nature of the condition warrants, a provisional or restricted license may be issued. A provisional license allows the human service center to operate while the center makes changes to its operation to satisfy human service center licensing standards. The provisional license may be in effect for a maximum of twelve months. A restricted license allows the human service center to operate for certain functions, but prohibits the center from operating for other functions when those functions do not meet human service center licensing standards and a provisional license would not give the center sufficient opportunity to meet those standards. A restricted license is issued for the same period of time as a nonrestricted license for the functions for which the human service center will be operating. A restricted license is in effect for the period specified in the license not to exceed twenty-four months. Prior to removing a restriction on a license and issuing an unrestricted license, the department ~~shall~~[may](#) conduct an onsite review to determine that the licensee is in full compliance with the standards contained in this article.

History: Effective February 1, 1996; amended effective January 1, 2009; [July 1, 2020](#).

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-00.1-11. Licensure team review followup.

~~After the human service center has corrected the cited conditions or has developed a plan to correct the cited conditions, at least two members of the original~~The licensure team shall request documentation or ~~conduct followup visits, if deemed appropriate based on the nature of the condition, to verify that the human service center has corrected the conditions or completed its correction plan. Site compliance with the previous licensing review conditions and recommendations must be reviewed during the next licensing review~~an onsite review, or both, to ensure the program has implemented their corrective action plan.

History: Effective February 1, 1996; amended effective January 1, 2009; July 1, 2020.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-01

75-05-01-01. Definitions.

As used in this article:

1. "Acute treatment services" means a group of core services designed to address the needs of vulnerable children, adolescents, adults, elderly, and families who have problems.
2. "Addiction evaluation" means an assessment ~~by an addiction counselor~~ to determine the nature or extent of ~~possible alcohol abuse, drug abuse, or chemical dependency~~substance use or addictive disorders.
3. "Admission process" means an initial face-to-face contact with the consumer intended to define and evaluate the presenting problem and make disposition for appropriate services.
4. "Adult diagnosed with a serious mental illness" means an adult that meets the definition of "chronically mentally ill" as defined in North Dakota Century Code section 57-38-01.
5. ~~"Adult family foster care licensure services" means the technical assistance provided by a human service center to a county social service board or adult family foster care provider to implement the adult family foster care law, rules, and policies and procedures and authorization to operate an adult family foster care home through issuance of a license.~~
- ~~6.~~ "Aftercare services" means activities provided for an individual who is in an inpatient facility or an intensive outpatient program and ready for discharge. These services assist an individual in gaining access to needed social, psychiatric, psychological, medical, vocational, housing, and other services in the community.
- ~~7.~~6. "Case management" means services which will provide or assist an individual in gaining access to needed social, psychiatric, psychological, medical, vocational, housing, and other services in the community.
- ~~8.~~7. "Client" or "consumer" means an individual who receives services from the human service center and for whom a client or consumer record is maintained.
- ~~9.~~8. "Client record" or "consumer record" means a compilation of those events and processes that describe and document the evaluation, care, treatment, and service of the client or consumer.
- ~~10.~~9. "Clinical services" means a variety of services, including acute treatment services, emergency services, extended care services, medications, community consultation and education, psychological services, and regional intervention services to meet the care and treatment needs of consumers.
- ~~11.~~10. "Community home counselor" means an individual who provides care, supervision, and training for an individual with serious mental illness or serious emotional disturbance in a community residential care facility and assists a resident in reorientation to the community.
- ~~12.~~11. "Community living supervisor" means a professional who is responsible for the planning and implementation of training and treatment in a community residential care facility for an individual with serious mental illness.
- ~~13.~~12. "Community residential service" means a variety of residential options which may include transitional living, supported living, crisis residential, in-home residential services, and other residential services necessary to assist an individual in becoming successful and satisfied in the individual's living environment.
- ~~14.~~13. "Core services" means a minimum set of services that all human service centers provide.

- ~~15.14.~~ "Crisis residential services" means temporary housing to provide crisis intervention, treatment, and other supportive services necessary for an individual to remain in the community.
- ~~16.15.~~ "Department" means the department of human services.
- ~~17.16.~~ "Diagnosis" means the process of identifying specific mental or physical disorders based on standard diagnostic criteria.
- ~~18.~~ ~~"Educational programs" means planned, time-limited educational programs, including child management or parenting courses.~~
- ~~19.17.~~ "Emergency services" means a service that is available at all times to handle crisis situations.
- ~~20.18.~~ "Evidence-based practice" is defined as an intervention that has been demonstrated, by scientific methods and peer review, to be an effective treatment strategy for the individual, family, or group being served.
- ~~21.19.~~ "Extended care services" means services provided to an individual with serious mental illness to maintain or promote social, emotional, and physical well-being through opportunities for socialization, work participation, education, and other self-enhancement activities. Extended care services include community residential services, work skills development, community supportive care services, case management and aftercare services, and ~~psychosocial rehabilitation~~ recovery centers.
- ~~22.~~ ~~"Extended services" means a federally mandated [34 CFR part 363.50(a)(2)] component designed to provide employment-related, ongoing support for an individual in supported employment. Extended services may include job development, replacement in the event job loss occurs, and, except for an individual with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite.~~
- ~~23.20.~~ "Family therapy" means a form of treatment in which the family is treated as a whole.
- ~~24.21.~~ "Group counseling" or "group therapy" means a form of treatment in which a group of consumers, with similar problems, meet with a counselor or therapist to discuss difficulties, provide support for each other, gain insight into problems, and develop better methods of problem solving.
- ~~25.22.~~ "Human service center" means a facility established in accordance with North Dakota Century Code section 50-06-05.3.
- ~~26.23.~~ "Human service council" means a group appointed in accordance with North Dakota Century Code section 50-06-05.3.
- ~~27.24.~~ "Individual counseling" or "individual therapy" means a form of treatment in which a counselor or therapist works with a consumer on a one-to-one basis.
- ~~28.25.~~ "Individual plan" means a document which describes an individual plan of treatment or service for each consumer, including a description of the consumer's problems and goals for treatment and the individuals responsible for initiating and implementing the plan.
- ~~29.~~ ~~"Individual service plan (ISP)" means an individual plan that identifies service needs of the eligible consumer and the services to be provided, and which is developed by the mental retardation development disabilities case manager and the consumer or that consumer's legal representative, or both, considering all relevant input.~~

- ~~30.~~ "Individualized plan for employment (IPE)" means a statement of a consumer's employment goal and a detailed outline of the program to be followed in achieving the goal. The individualized plan for employment is not a contract, but rather a tool in the rehabilitation process used for informational, planning, and assessment purposes. Participatory planning by the counselor and the consumer is required to establish communication and a mutual understanding of the goals and the objectives.
- ~~31.~~ "Long term care ombudsman program" means a program that advocates for the rights and interests of residents in long term care and tenants in assisted living facilities.
- ~~32.~~ "Medication review" means prescription monitoring and consultation, with a consumer, performed by a prescribing professional, regarding the consumer's use of medication. A prescribing professional is one whose license allows the professional to prescribe medications.
- ~~33.~~ "Mental retardation developmental disabilities case management" means services which will assist an individual with mental retardation and related conditions in gaining access to needed medical, social, educational, vocational, and other services, review of consumer outcomes and satisfactions, monitoring and evaluation of services, and includes related paperwork, collateral contacts with significant others and other agencies, phone contacts, and consultation with other staff, supervisors, and peers.
- ~~34.~~ "Mental retardation developmental disabilities case manager" means a qualified mental retardation professional who is responsible for providing a single point of entry, program coordination, monitoring, and review for assigned consumers.
- ~~35-26.~~ "Mental status" means an evaluation of an individual's appearance, posture, mood, affect, attitude toward assessment, orientation, speech, recent and remote memory, abstract reasoning, insight, judgments, preoccupations, hallucinations, delusions, and suicidal or homicidal ideation.
- ~~36.~~ "Minorities" means all individuals who are ethnic black, hispanic, Asian or Pacific islander, American Indian, or Alaskan native.
- ~~37-27.~~ "Multidisciplinary team" means at least three staff members representing two different ~~professions, disciplines, or services~~. At least one of the three must be a psychiatrist or psychologist. As determined appropriate by the human service center, a clinical nurse specialist may substitute for a psychiatrist if neither a psychiatrist nor a psychologist can be in attendance. The exception must be noted on the multidisciplinary case conference note prepared at the time of staffing.
- ~~38.~~ "National family caregiver support program" means a multifaceted system of support services for family caregivers of older adults, and for grandparents or relative caregivers of children not more than eighteen years of age as required in title III-E of the Older Americans Act [42 U.S.C. 3030s].
- ~~39.~~ "Older Americans Act" means Public Law 89-73, first enacted in 1965, to improve the lives of America's older individuals, particularly in relation to income, health, housing, employment, long term care, retirement, and community services.
- ~~40-28.~~ "Outreach" means the provision of services, including direct services, and information and referral, to areas outside of the main office of a regional human service center.
- ~~41-29.~~ "Program" means an organized system of services designed to meet the service needs of consumers.

- 42.30. "Progress notes" means the documentation in the consumer's record which describes the consumer's progress or lack of progress as it relates to the approved treatment plan.
- 43.31. "Psychiatric evaluation" means a psychiatric diagnostic interview examination, including a history, mental status, and a disposition, and may include communication with family members or other sources.
- 44.32. "Psychiatrist" means a physician, with three years of approved residency training in psychiatry, who is American board of psychiatry and neurology eligible, and who is licensed to practice medicine in the state of North Dakota.
- 45.33. "Psychological evaluation" means the assessment or evaluation of a consumer by or under the supervision of a licensed psychologist.
- 46.34. "Psychologist" means a professional who holds a doctor's degree in psychology and who is licensed by the state of North Dakota or who qualifies as a psychologist under North Dakota Century Code section 43-32-30.
- ~~47. "Psychosocial rehabilitation center" means a facility whose staff provides socialization, social skill building, information and referral, and community awareness for the purpose of enhancing the ability of an individual diagnosed with serious mental illness to live in the community.~~
- 48.35. "Qualitative and quantitative indicator" means an expected standard of care or outcome that can be measured.
- ~~49. "Regional aging services program administrator" means an individual responsible for regional planning and development of aging programs, monitoring and assessment of regional Older Americans Act title III programs, management and supervision of regional vulnerable adult protective services activities, management and supervision of the regional family caregiver support program activities, management and supervision of the regional long term care ombudsman program activities, and advocacy activities on behalf of older individuals, and may include supervision of regional adult family foster care licensure services.~~
- 50.36. "Recovery center" means a facility whose staff provides socialization, social skill building, information and referral, and community awareness for the purpose of enhancing the ability of an individual diagnosed with serious mental illness to live in the community.
37. "Regional director" means the human service professional who is appointed by the executive director of the department to be responsible for the overall management and administration of the human service center.
- 51.38. "Regional intervention service" means a service unit within a human service center which provides crisis intervention and support services in a community as an alternative to state hospital admission.
- ~~52. "Regional mental retardation developmental disabilities program administrator" means a professional designated by the regional director who is responsible for the overall management and administration of the mental retardation developmental disabilities case management system.~~
- ~~53. "Regional representative of county social services programs" means an individual, designated by the regional director of the human service center, to whom is delegated the responsibility of supervising and assisting with county social service board programs as assigned.~~

- ~~54.39.~~ "Semi-independent living arrangement" means an arrangement that, through the use of intensive, in-home support services, gives a consumer the ability to reside in the consumer's own home.
- ~~55.40.~~ "Seriously mentally ill (SMI) group care" means the provision of meals and lodging-related services to an individual in a twenty-four-hour per day community-based living environment established for an individual who does not need the protection offered in an institutional setting, but is not yet ready for independent living.
- ~~56.~~ "Supervision of county social services" means the activities of supervision, consultation, evaluation, licensure, certification of various county social service programs, program planning, implementation, monitoring, receiving and reviewing reports, generation of statistical reports, staff development, and inservice training of county social service board staff and board members.
- ~~57.41.~~ "Utilization review" means a program designed to ensure optimal use of center resources to determine if professionally recognized standards are being practiced for service utilization.
- ~~58.~~ "Vocational adjustment counseling" means assisting the individual and the individual's family to understand and accept any physical or mental limitations placed on activities because of a disability. This includes working with the consumer, teacher, trainer, and employer to help the consumer learn adaptive behavior or techniques to attain the vocational objective and function appropriately in the family and community.
- ~~59.~~ "Vocational assessment diagnosis and evaluation" means acquisition and analysis of medical, psychological, vocational, educational, and social information to determine the effect of a disability on preparing for or obtaining employment. This also includes the medical and psychological consultations, as well as consultations with social workers, teachers, and employers, on behalf of a specific consumer.
- ~~60.~~ "Vocational rehabilitation administrator" means the professional responsible for the overall management and implementation of all vocational rehabilitation services within a region.
- ~~61.~~ "Vocational rehabilitation counselor" means the qualified rehabilitation professional who provides vocational counseling and guidance, and placement services, and who assists an individual with physical or mental disabilities.
- ~~62.~~ "Vulnerable adult protective services" means remedial, social, legal, health, mental health, and referral services provided for prevention, correction, or discontinuation of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living.
- ~~63.~~ "Work skills development" means a range of services designed to assess consumers' vocational strengths and weaknesses, provide prevocational skills training, job exploration, and followup.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996; January 1, 2009; [July 1, 2020](#).

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

CHAPTER 75-05-03 CLINICAL SERVICES

Section

75-05-03-01	Outpatient Services
75-05-03-02	Emergency Services
75-05-03-03	Extended Care Services
75-05-03-04	Medications
75-05-03-05	Psychiatric Services
75-05-03-06	Community Consultation and Education
75-05-03-07	Psychological Services
75-05-03-08	Regional Intervention Services
75-05-03-09	Substance Abuse Treatment <u>Use and Other Addictive Disorders</u>

75-05-03-01. Outpatient services.

Outpatient services. An outpatient service is an organized, nonresidential service or an office practice which provides professionally directed aftercare, individual, group, and other services to consumers.

1. Each human service center shall offer a range of outpatient services to consumers based on consumers' needs regarding emotional, social, and behavioral problems. These outpatient services include services provided or arranged for:
 - a. Individual counseling;
 - b. Group counseling;
 - c. Family counseling;
 - d. Psychological and psychometric evaluations of testing; and
 - e. Psychiatric assessments.
2. Each human service center shall define and provide general outpatient services to vulnerable children, adolescents, adults, elderly, and families who are experiencing psychosocial, psychiatric, or substance ~~abuse~~ use issues, including any combination of those issues.
3. Each human service center shall develop written program descriptions of each program provided by the center.
4. Outpatient services must be available to consumers during the day and on designated evenings or weekends.
5. All significant consumer contacts and treatment provided must be documented in the consumer's record.
6. With the consumer's permission, acute treatment outpatient services must be coordinated with other private and public agencies.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996; January 1, 2009; July 1, 2020.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-03. Extended care services.

1. Community residential services.

- a. The regional director shall designate a community living supervisor to supervise the community residential services.
- b. The human service center shall provide or contract for at least two of the following services:
 - (1) SMI group care.
 - (a) SMI group care facilities must:
 - [1] House no more than sixteen consumers;
 - [2] Have the ability to house both male and female consumers while accommodating privacy for individuals;
 - [3] Provide at least one full bathroom, consisting of at least a sink, toilet, and shower, for every four consumers;
 - [4] Have bedrooms which are outside rooms with a window that is in good working order and may operate as a secondary exit from the room, accommodate one or two consumers, provide each consumer with a bed appropriate for the consumer's size and weight, with a clean and comfortable mattress, bedding appropriate for weather and climate, and provide other appropriate bedroom furniture;
 - [5] Comply with the provisions of the chapter governing lodging or rooming houses as outlined in the most recent edition of the national fire protection association's life safety code; and
 - [6] Have an annual fire and safety inspection by the state or local fire marshal's office or other accepted local authority.
 - (b) The staff of the SMI group care facility shall:
 - [1] Assure that the consumer's individual plan includes input from the community home counselors and the residential treatment team.
 - [2] Maintain an inventory of the consumer's personal belongings when the consumer enters the SMI group care facility.
 - (c) A brochure of consumers' rights according to section 75-05-01-10 must be given to all new residents of the SMI group care facility upon admission and explained in terms the resident can understand.
 - (2) Semi-independent living arrangement. A semi-independent living arrangement is one which, through the use of intensive, in-home support services, gives a consumer the ability to reside in the consumer's own home.
 - (a) The human service center shall develop policies and procedures which facilitate conformance with all local building and fire safety codes to encourage that safe and sanitary conditions are maintained.
 - (b) Human service center staff shall develop policies and procedures to ensure that semi-independent living services are being provided in the consumer's residence.

- (c) An evaluation of the consumer's progress in semi-independent living services must be documented in the consumer's record on at least a monthly basis or in response to a significant event that has an impact on life domains.
 - (3) Crisis residential services.
 - (a) Human service center staff shall develop policies and procedures to assure that safe and effective crisis residential services are provided.
 - (b) Human service center staff shall document the consumer's progress, or lack thereof, on a daily basis.
- 2. Work skills development.
 - a. The human service center shall either provide or contract for:
 - (1) Methods to assess the abilities of adults diagnosed with serious mental illness as related to employment;
 - (2) Prevocational skills development and training;
 - (3) Job exploration; and
 - (4) Followup.
 - b. The human service center shall document the consumer's progress in work skills development at least monthly.
- 3. Case management and aftercare services for an adult diagnosed with serious mental illness.
 - a. Case management services must be available to adults diagnosed with serious mental illness and ~~who have a global assessment of functioning score less than fifty (unless otherwise clinically indicated, with and without supports)~~ a functional impairment.
 - b. Case management for an adult diagnosed with serious mental illness must be identified on the consumer's individual plan and must be documented in the progress notes.
 - c. Aftercare services must be available to all adults diagnosed with serious mental illness in a treatment or correctional facility who are returning to the community after discharge. The regional director shall designate one or more staff members to provide aftercare services. Services must include the following activities, pursuant to appropriately signed releases and adherence to applicable privacy provisions:
 - (1) Regular visits or communication by aftercare staff with the treatment facility to monitor progress of those consumers who are admitted to the facility from the human service center's service area.
 - (2) Regular visits or communication by aftercare staff with the correctional facility when contacted by the facility regarding a consumer's pending release to monitor progress of those consumers who are admitted to the facility from the human service center's service area.
 - (3) Attendance by aftercare staff at meetings established for the purpose of improving communication and coordination between the treatment or correctional facility and the regional human service center.

- (4) Provision of knowledge and communicating by aftercare staff to other regional human service center staff regarding treatment or correctional facility admission and discharge procedures.
 - d. The human service center, through case management services, shall ensure that extended services are provided for an adult diagnosed with serious mental illness who has completed the training and stabilization components of the supported employment program and continues to require ongoing support services to maintain competitive employment.
 - e. If individual plans dictate, case management services must provide or arrange for daily living skills training in the community.
4. ~~Psychosocial rehabilitation~~Recovery centers.
- a. The human service center shall provide or contract for the operation of a ~~psychosocial rehabilitation~~recovery center.
 - b. The ~~psychosocial rehabilitation~~recovery center shall provide services that support adults diagnosed with serious mental illness in their recovery by providing opportunities for learning appropriate socialization and leisure or recreational skills through social and recreational milieu, information and referral, and community awareness activities.
 - c. The ~~psychosocial rehabilitation~~recovery center must be open a minimum of forty hours per week. The hours of operation for the ~~psychosocial rehabilitation~~recovery center must be determined with member participation during a regularly held and announced membership meeting. Documentation of the meeting, including a compilation of consumer comments and votes, must be maintained by the ~~psychosocial rehabilitation~~recovery center and be open for review.
 - d. The ~~psychosocial rehabilitation~~recovery center shall employ a full-time director and part-time staff sufficient to provide services.
 - e. The ~~psychosocial rehabilitation~~recovery center must have a mechanism for member participation in policy formation. The ~~psychosocial rehabilitation~~recovery center shall maintain documentation of this participation and the documentation must be open for review.
 - f. The ~~psychosocial rehabilitation~~recovery center shall develop a calendar of events seven to ten days in advance which must be made available to the membership and the regional human service center.
 - g. The regional director shall appoint a human service center staff member as a liaison between the human service center and the ~~psychosocial rehabilitation~~recovery center.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996; March 1, 1997; August 1, 1997; January 1, 2009; July 1, 2020.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-03-09. Substance ~~abuse treatment~~use and other addictive disorders.

The human service center must have an addiction program which meets the requirements of articles 75-05 and 75-09.1.

History: Effective January 1, 2009; amended effective July 1, 2020.

General Authority: NDCC 50-31

Law Implemented: NDCC 50-31

CHAPTER 75-05-04

75-05-04-03. Individual plans.

1. Each consumer who has been admitted for service to the human service center shall have an individual plan based on the admission data and needs of the consumer.
2. Overall development and implementation of the individual plan are the responsibility of the professional staff member assigned the consumer.
3. ~~The individual plan must be developed in accordance with the following:~~
 - ~~a. Consumers who are eligible for clinical services must have an individual plan.~~
 - ~~b. Consumers who are eligible for vocational rehabilitation services must have an individual plan for employment (IPE).~~
 - ~~c. Consumers who are eligible for mental retardation developmental disabilities case management must have a case plan and an individual services plan (ISP).~~
- ~~4.~~ The individual plan must contain the consumer's name, problems, service strategies to resolve problems, goals, measurable objectives, names of staff members responsible for service strategies, and the signature of the case manager. ~~In the case of consumers who are eligible for medical assistance benefits, and receiving clinic service, the consumer's record must document physician approval.~~
- ~~5.4.~~ The professional staff member assigned to the consumer shall develop and review the individual plan with the consumer, shall document in the consumer's record the consumer's input in the development and review indicating the extent of the involvement in developing the individual plan, and shall have the consumer sign the treatment plan. If the consumer refuses or is unable to sign the treatment plan, this must be documented in the consumer's record.
- ~~6.~~ ~~Upon completion of the admission process, admission personnel shall make a provisional diagnosis and initiate a treatment plan.~~
- ~~7.5.~~ Except in the case of emergency services, within twenty working days from the date of admission, which is the time when the consumer and the staff member first meet to begin the admission process, the multidisciplinary team shall hold a case staffing to confirm or to revise the diagnosis and treatment plan, or to reassign the consumer to an appropriate member of the professional staff.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996; January 1, 2009; [July 1, 2020](#).

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

75-05-04-05. Individual plan review.

- ~~1.~~ For clinical services, the consumer, case manager, and case manager's supervisor shall review individual plans at least every six months, except when consumer circumstances necessitate a change to the treatment plan.
- ~~2.~~ ~~For extended care cases, the consumer, case manager, and case manager's supervisor shall review individual plans at least every twelve months, except when consumer circumstances necessitate a change to the treatment plan.~~
- ~~3.~~ ~~For vocational rehabilitation services, the vocational rehabilitation counselor and the consumer shall review and evaluate the individual plan for employment at least every twelve months.~~

~~4. For developmental disabilities case management, the counselor and the consumer shall review the individual service plan at least every twelve months.~~

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996; March 1, 1997; January 1, 2009; July 1, 2020.

General Authority: NDCC 50-06-05.2

Law Implemented: NDCC 50-06-05.2

**CHAPTER 75-05-05
SPECIALIZED SERVICES**

[Repealed effective July 1, 2020]

Section

- ~~75-05-05-01 — Mental Retardation-Developmental Disabilities Program — Case Management~~
- ~~75-05-05-02 — Vocational Rehabilitation~~
- ~~75-05-05-03 — Supervision and Direction of County Social Services~~
- ~~75-05-05-04 — Community Correction Program [Repealed]~~
- ~~75-05-05-05 — Aging Services~~
- ~~75-05-05-06 — Long Term Care Ombudsman Program [Repealed]~~

TITLE 108
DEPARTMENT OF COMMERCE

JULY 2020

CHAPTER 108-02-01
THIRD-PARTY INSPECTIONS PROGRAM

Section

108-02-01-01	History
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108-02-01-09	Manufacturer's Data Plate [Repealed]
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108-02-01-12	Uniform Administrative Procedures
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108-02-01-14	Fees for State Inspections of Sited Structures

108-02-01-01. History.

The fifty-seventh legislative assembly, in House Bill No. 1210, directed the division of community services to develop rules to certify third-party inspection agencies and to develop procedures for these agencies to follow in inspecting the construction of modular residential and commercial structures built in a factory. To implement this program, the division of community services has elected to become a "participating state" under the industrialized buildings commission. [In 2011, the sixty-second legislative assembly passed Senate Bill No. 2284 enacting the interstate compact on industrialized or modular buildings becoming a "compacting state" which is codified as North Dakota Century Code chapter 54-21.4.](#) The industrialized buildings commission provides for the certification of third-party agencies and the procedures for these agencies to follow in assuring that industrialized modular buildings are designed, manufactured, handled, stored, delivered, and installed according to adopted state construction standards. In ~~2003~~2011, the ~~fifty-eighth~~sixty-second legislative assembly, in ~~House~~Senate Bill No. ~~1345~~2366, amended North Dakota Century Code section 54-21.3-07 to make the law mandatory for manufacturers producing ~~six~~two or more modular residential and commercial structures per year. In ~~addition~~2003, [the fifty-eighth legislative assembly, in](#) House Bill No. 1345 amended North Dakota Century Code section 54-21.3-03, requiring that modular residential structures or prebuilt homes placed in the state must be constructed in compliance with the state building code and amendments to the state building code adopted by the jurisdictions in which the modular residential structure or prebuilt home is placed.

History: Effective July 1, 2003; amended effective July 16, 2003; [July 1, 2020](#).

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07, [54-21.4](#)

108-02-01-03. Inquiries.

Inquiries about this program may be addressed to:

Third-party Inspections Program Manager
North Dakota Department of Commerce
Division of Community Services
Phone: ~~701-328-3698~~
~~E-mail: rgray@state.nd.us~~ [701-328-5300](tel:701-328-5300)

History: Effective July 1, 2003; [amended effective July 1, 2020](#).

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-07. Definitions.

For purposes of this chapter:

1. "Act" means the laws of the participating state governing industrialized modular construction as amended and supplemented by the enabling legislation of the interstate compact on industrialized modular buildings.
2. "Approved" means approved by the industrialized buildings commission, a participating state, or a designated evaluation inspection agency.
3. "Building component" means any subsystem, subassembly, or other system of closed construction designed for use in or as part of a structure, which may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.
4. "Building system" means the method of constructing a type of industrialized modular building or building component described by plans, specifications, and other documentation which together establish a set of limits meeting the building codes, standards, and other requirements of these regulations for that type of industrialized modular building or building component, which may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.
5. "Certification" means the process by which participating states and local building inspection agencies are assured that elements of closed construction, not practical to inspect at the building site, conform to the building codes.
6. "Certification label" means an approved insignia or seal evidencing certification in accordance with the uniform administrative procedures.
7. "Closed construction" means any building, building component, assembly, or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected at the building site without disassembly, damage, or destruction. The definition shall not include products, such as structural, electrical, and plumbing fixtures and equipment which are tested, listed, labeled, and certified by a nationally recognized testing laboratory.
8. "Code" means the codes, standards, specifications, and requirements adopted pursuant to section 108-02-01-08.

9. "Commission" means the industrialized buildings commission.
10. "Compliance assurance documents" means approved building system documents, an approved compliance assurance manual, and approved onsite installation instructions.
11. "Compliance assurance program" means the policies and procedures which assure that industrialized modular buildings and building components, including their manufacture, storage, delivery, assembly, handling, and installation, conform with these model rules and regulations and the uniform administrative procedures.
12. "Designated" means selected by the commission to perform one or more of the inspection or evaluation, or both, functions described under the uniform administrative procedures.
13. "Evaluation agency" means a designated person or organization, private or public, determined by the commission to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgment, to investigate and evaluate industrialized modular buildings, building components, building systems, or compliance assurance programs.
14. "Factory" means an individual or entity that manufactures ~~six~~two or more residential or commercial industrialized modular buildings per year. Residential industrialized modular buildings manufactured by high schools, vocational technical centers, and colleges or universities as part of a bona fide educational program are excluded. A manufacturer that does not meet this definition must provide a yearly certification to the division of community services that is exempt from this definition. Any industrialized modular building that is excluded from the modular residential and commercial structure third-party inspection program is subject to inspection from state or local enforcement agencies.
15. "Independence of judgment" means not being affiliated with or influenced or controlled by building manufacturers or by producers, suppliers, or vendors of products or equipment used in industrialized modular buildings and building components, in any manner which is likely to affect capacity to render reports and findings objectively and without bias.
16. "Industrialized modular building" means any building of closed construction, i.e., constructed in such a manner that concealed parts or processes of manufacture cannot be inspected at the site, without disassembly, damage, or destruction, and which is made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. Industrialized modular building includes modular housing which is factory-built single-family and multifamily housing, including closed-wall panelized housing, and other modular, nonresidential buildings. Industrialized modular building does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.
17. "Inspection agency" means a designated person or organization, private or public, who is determined by the commission to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgment, to monitor compliance assurance programs.
18. "Installation" means the process of affixing, or assembling and affixing, industrialized modular buildings or building components on the building site.
19. "Interim reciprocal agreement" means a formal reciprocity agreement as defined in the enabling legislation of the interstate compact on industrialized modular buildings.
20. "Local enforcement agency" means the agency or agencies of the participating states or local government with authority to inspect buildings and enforce the law, ordinances, and

regulations which establish standards and requirements applicable to the construction, installation, alteration, repair, or relocation of buildings.

21. "Modular residential or commercial structure" means an industrialized modular building.
22. "Module" means a closed-wall structure or substantial part of a closed-wall structure incorporating one or more rooms used as habitable, occupiable, or mechanical or equipment space.
23. "Nonconformance" means the failure to adhere to the requirements of an approved building system or, where the building system is not specific, to the code.
24. "Participating state" means any compacting state or any noncompacting state acting under the purview of an interim reciprocal agreement.

History: Effective July 1, 2003; amended effective July 16, 2003; [July 1, 2020](#).

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-08. Standards.

Building systems must comply with:

1. Primary codes.

- a. Building codes - International building code (IBC) and international residential code (IRC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code and any local amendments to the North Dakota state building code submitted by July first of each year to the division of community services for distribution to the industrialized buildings commission and manufacturers on or about July first of each year.
- b. Mechanical code - International mechanical code (IMC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code and any local amendments to the North Dakota state building code submitted by July first of each year to the division of community services for distribution to the industrialized buildings commission and manufacturers on or about July first of each year.
- c. Fuel gas code - International fuel gas code (IFGC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code and any local amendments to the North Dakota state building code submitted by July first of each year to the division of community services for distribution to the industrialized buildings commission and manufacturers on or about July first of each year.
- d. Plumbing code - Uniform plumbing code (UPC) published by the international association of plumbing and mechanical officials (IAPMO), as adopted and amended as the North Dakota state plumbing code.
- e. Electrical code - National electrical code (NEC) published by the national fire protection association (NFPA), as adopted and amended as the laws, rules, and wiring standards of North Dakota.
- f. Barrier-free code - Americans with Disabilities Act accessibility guidelines.
- g. Energy code - ~~1993 model energy code published by the council of American building officials~~ [Energy conservation standards as adopted and amended in the North Dakota state building code.](#)

2. **Alternates.** The provisions of this chapter are not intended to prevent the use of any technologies, techniques, or materials not specifically prescribed by these codes, standards, specifications, and requirements, provided any such alternate has been approved.
 - a. Applications for such alternates must be filed in writing with the evaluation agency. This application must contain the current requirements of the codes, standards, or specifications from which an alternate is sought and a statement of how the proposed alternate would adequately protect the health, safety, and welfare of both the occupants and the public.
 - b. The evaluation agency may approve any such alternate, provided that it determines that the proposed design is satisfactory and that the material, method, or work offered is, for the purpose intended, consistent with the adopted codes and standards as to quality, strength, effectiveness, fire resistance, durability, and safety. The evaluation agency shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding the use of any such alternate. The evaluation agency shall notify the applicant of the determination. If the application is denied, the notification shall state the reasons for the denial.

History: Effective July 1, 2003; amended effective July 16, 2003; [July 1, 2020](#).

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-09. Manufacturer's data plate.

[Repealed effective July 1, 2020.](#)

~~—The following information must be typewritten on a smudge-proof, permanent manufacturer's data plate located in the vicinity of the certification label:~~

~~—1.— Name and address of manufacturer;~~

~~—2.— Serial numbers (manufacturer's identification numbers);~~

~~—3.— Manufacturer's plan approval designation (model number or name);~~

~~—4.— Certification label numbers;~~

~~—5.— Construction classification;~~

~~—6.— Occupancy classification or use group;~~

~~—7.— Seismic zone;~~

~~—8.— Wind velocity load;~~

~~—9.— Roof and floor live load;~~

~~—10.— Fire rating for exterior walls;~~

~~—11.— Thermal transmittance values;~~

~~—12.— Date of manufacture;~~

~~—13.— The name and date of the building codes complied with; and~~

~~—14.— Service panel size.~~

~~**History:** Effective July 1, 2003.~~

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-10. Serial number.

Repealed effective July 1, 2020.

~~—The manufacturer shall apply a serial number to each unit at the beginning of the production process. The serial number shall not be applied to a feature of the industrialized building or building component that is readily removable. The location of the serial numbers must be identified in the manufacturer's compliance assurance program.~~

History: Effective July 1, 2003.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-11. Compliance assurance documents.

Repealed effective July 1, 2020.

- ~~1. **Building systems documents.** The building systems documents consist of plans, specifications, calculations, test results, or other documents which describe in detail the product and manufacturing processes employed to produce industrialized modular buildings or building components. The documents need only show details for equipment provided by the manufacturer. The documents must be comprehensively indexed and shall treat the material listed in this section in detail. For the building systems to be evaluated, the following must be provided:
 - ~~a. General requirements:
 - ~~(1) All plans, specifications, and other documentation must be submitted in three copies.~~
 - ~~(2) All documents submitted with the application must be identified to indicate the manufacturer's name.~~
 - ~~(3) A clear space must be provided on all sheets of plans near the title box for the stamps of approval.~~
 - ~~(4) Manufacturers shall submit plans showing all elements relating to specific systems on properly identifiable sheets.~~
 - ~~(5) Structural connections and connection of systems, equipment, and appliances to be performed onsite must be identified, detailed, and distinguished from work to be performed in the manufacturing facility.~~
 - ~~(6) Method of interconnection between industrialized modular buildings or building components and location of connections.~~
 - ~~(7) Design calculations or test reports, or both, must be submitted when required by the evaluation agency. The manufacturer shall cross-reference all designs to appropriate calculations or test reports, or both.~~
 - ~~(8) Documents must indicate the location of the certification label.~~
 - ~~(9) Drawings must be dated and identified and include an index that can be used to determine that the package is complete.~~~~~~

~~(10) Documents must provide or show, as appropriate, occupancy or use; area, height, and number of stories; type of construction; and wind, floor, snow, and seismic loads.~~

~~b. Required construction details. Documents for industrialized modular buildings or building components must provide or show, as appropriate, the details listed below. Only the minimum documentation necessary to demonstrate each alternative possible within the system is required.~~

~~(1) General.~~

~~(a) Details and methods of installation of industrialized modular buildings or building components on foundations or to each other.~~

~~(b) Floor plans and typical elevations.~~

~~(c) Cross-sections necessary to identify major building components.~~

~~(d) Details of flashing, such as at openings and at penetrations through roofs and subcomponent connections, including flashing material and gauge to be used.~~

~~(e) Attic access and attic ventilation, when required by the code.~~

~~(f) Exterior wall, roof, and soffit material.~~

~~(g) Interior wall and ceiling material.~~

~~(h) Barrier-free provisions, if applicable.~~

~~(i) Sizes, locations, and types of doors and windows.~~

~~(j) Suggested foundation plans, vents, and underfloor access.~~

~~(k) Details of any elevator or escalator system, including method of emergency operation, when provided.~~

~~(2) Fire safety.~~

~~(a) Details of fire-rated assemblies, including reference listing or test report for all stairway enclosures, doors, walls, floors, ceiling, partitions, columns, roof, and other enclosures.~~

~~(b) Means of egress, including details of aisles, exits, corridors, passageways, and stairway enclosures.~~

~~(c) Flame spread and smoke developed classification of interior materials.~~

~~(d) Location of required draftstops and firestops.~~

~~(e) Opening protectives in fire resistance-rated systems and assemblies.~~

~~(f) Drawings of fire suppression systems, standpipes, fire alarms, and detection systems, when required.~~

~~(3) Structural detail requirements.~~

~~(a) Calculations of structural members or test results, if appropriate, except when compliance can be demonstrated through code tables, accepted handbooks, and listing documents.~~

~~(b) Details of structural elements, including framing details, spacing, size, and connections.~~

~~(c) Grade, species, and specifications of materials.~~

~~(d) Typical foundation plans, details, and assumed design soil-bearing value.~~

~~(e) Schedule of roof, floor, wind, and seismic loads upon which design is based.~~

~~(f) Column loads and column schedule.~~

~~(4) Mechanical detail requirements.~~

~~(a) Location of all equipment, appliances, and baseboard radiation units.~~

~~(b) Energy conservation calculations.~~

~~(c) Indicate input and output rating of all equipment and appliances, as appropriate.~~

~~(d) Duct and register locations, sizes, and materials, as appropriate.~~

~~(e) Method of providing combustion air, if required.~~

~~(f) Method of providing ventilation air, if required.~~

~~(g) Method of providing makeup air, if required.~~

~~(h) Location of flues, vents, and chimneys and clearances from air intakes, combustible materials, and other vents and flues.~~

~~(5) Plumbing detail requirements.~~

~~(a) Schematic drawing of the plumbing layout, including size of piping, fittings, traps and vents, cleanouts and valves, and gas, water, and drainage systems.~~

~~(b) Plumbing materials and location of all equipment, appliances, and safety controls to be used. Indicate the rating and capacity of equipment and appliances.~~

~~(6) Electrical detail requirements.~~

~~(a) Details of any service equipment provided by the manufacturer.~~

~~(b) Method of grounding service equipment.~~

~~(c) Load calculations for service and feeders.~~

~~(d) Sizes of branch circuit conductors.~~

~~(e) Size, rating, and location of main disconnect and overcurrent protective devices.~~

~~(f) Location of outlets, junction boxes, fixtures, and appliances.~~

~~(g) A single-line diagram of the entire electrical installation, with the exception of one and two family dwellings.~~

~~2. **Compliance assurance program.** The compliance assurance program is a system employed by the manufacturer to assure conformance with the approved building systems documents.~~

~~The compliance assurance manual must be comprehensively indexed and must treat the material listed here in detail. The program must consist of the following:~~

~~a. Organizational requirements.~~

- ~~(1) Manufacturer's name, corporate office address, and the address of each manufacturing facility shall be indicated in the compliance assurance manual.~~
- ~~(2) The compliance assurance manual shall have a table of contents with the evaluation agency's dated stamp of approval on the cover sheet and any revised pages.~~
- ~~(3) An organizational mechanism for implementing and maintaining the compliance assurance program and its functional relationship to other elements of the organizational structure of the manufacturer, which mechanism shall not be a part of the production department. Employees in charge of the compliance assurance program must be identified and their training and qualifications specified.~~
- ~~(4) A uniform system of monitoring and evaluation to ensure program effectiveness.~~
- ~~(5) A serial numbering system for industrialized modular buildings or building components.~~
- ~~(6) Requirements for issuance, possession of, attachment of, and accounting for all certification labels to assure that certification labels are attached only to buildings or building components manufactured pursuant to an approved building system and inspected pursuant to an approved compliance assurance program.~~
- ~~(7) A system to document production changes in accordance with other provisions of this chapter.~~

~~b. Materials control.~~

- ~~(1) Procedures for inspection of materials, supplies, and other items at the point of receipt.~~
- ~~(2) Method of protection of materials, supplies, and other items at the point of receipt.~~
- ~~(3) Provision for disposal of rejected materials, supplies, and other items.~~

~~c. Production control.~~

- ~~(1) Procedures for timely remedial and preventive measures to assure product quality.~~
- ~~(2) Provision, maintenance, and use of testing and inspection equipment to assure compliance with the approved building system.~~
- ~~(3) Provision for frequency of sampling inspections.~~
- ~~(4) Provision of necessary authority to reject defective work and carry out compliance assurance functions, notwithstanding any conflict with production department goals and needs.~~
- ~~(5) A description of the manufacturing process showing the inspection and checkpoints for mandatory inspection characteristics.~~
- ~~(6) Inspection and test procedures, including accept and reject criteria and mandatory inspection characteristics.~~

~~(7) Provision for disposition of rejects.~~

~~d. Finished product control.~~

~~(1) Procedures for handling and storing all finished industrialized modular buildings or building components at the manufacturing plant or other storage point.~~

~~(2) Procedures for packing, packaging, and shipping operations and related inspections.~~

~~3. **Onsite installation procedures.** The onsite installation instructions consist of specific installation procedures provided by the manufacturer which specify the materials and procedures required to install the building in conformance with the code and standards. For purposes of this subsection, "specific installation procedures provided by the manufacturer" include:~~

~~a. Connection details of industrialized modular buildings or building components to the foundation.~~

~~b. Structural connections between the industrialized modular building or building component.~~

~~c. Connections required to complete the mechanical or utility systems.~~

~~d. Any special conditions affecting other structural elements.~~

History: Effective July 1, 2003.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-12. Uniform administrative procedures.

1. The [2018 version of the](#) uniform administrative procedures of the industrialized buildings commission, hereby incorporated by reference, shall constitute the procedures by which the division of community services shall assure itself and the commission of the compliance of industrialized modular building construction with the state building, plumbing, electrical, and accessibility codes, assess the adequacy of the building systems, and verify and assure the competency and performance of evaluation and inspection agencies.
2. Copies of the uniform administrative procedures may be obtained from the industrialized buildings commission, suite 210, 505 huntmar park drive, Herndon, Virginia ~~22070~~[20170](#).
3. The division of community services shall approve those evaluation or inspection agencies that the commission designates as meeting the requirements of part VI, section 1, of the uniform administrative procedures and that the commission finds otherwise qualified to perform the functions delegated to it.
4. The division of community services shall take such enforcement action against a manufacturer, inspection agency, or evaluation agency as recommended by the commission if, pursuant to the uniform administrative procedures, the commission determines that such manufacturer, inspection agency, or evaluation agency has failed to fulfill its responsibilities under the uniform administrative procedures.
5. Any notice or order issued pursuant to this chapter must be in writing and must be served upon the respondent party by certified mail and return receipt requested.
6. Any party aggrieved with an enforcement action taken by the division of community services may appeal under North Dakota Century Code chapter 28-32.

History: Effective July 1, 2003; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

CHAPTER 108-03-01 MANUFACTURED HOME INSTALLATION PROGRAM

Section

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108-03-01-03. Definitions.

1. "Certified inspector" means an employee of a participating jurisdiction, individual, employee of a private firm, employee of a manufacturer, housing inspector, or a North Dakota licensed engineer or architect who has been approved by the division to perform or enforce installation inspections.
2. ~~"Certified installer" means an installer of manufactured homes who is registered with the division, has installed at least five manufactured homes consecutively in compliance with the manufacturer's installation instructions, and is currently approved as a certified installer by the division.~~
- ~~3.~~ "Conflict of interest" means when there is a personal or private interest sufficient to influence or appears to influence the proper exercise of duties and responsibilities.
- ~~4.~~3. "Division" means the division of community services.
- ~~5.~~4. "Insignia" means a certificate or label of installation issued by the division to indicate compliance with the manufacturer's installation instructions and this chapter.
- ~~6.~~5. "Installation" means assembly, at the site of occupancy, of all portions of the manufactured home, connection of the manufactured home to existing utility connections that may not require licensing by other state agencies, and installation of support or anchoring systems, in accordance with the manufacturer's installation instructions or the alternate standards adopted in this chapter.
- ~~7.~~6. "Installation authorization" or "installation permit" means a notice posted on the site of an installation indicating that the installer has authorization to install.
- ~~8.~~7. "Installation committee" means the committee to assist in the development and implementation of the manufactured home installation program. Represented on the committee are the division of community services, two representatives from the North Dakota

building officials association, [two representatives from](#) the North Dakota league of cities, and the board of directors of the North Dakota manufactured housing association.

~~9-8.~~ "Installer" means any person who attaches the manufactured unit sections together and ties the home to its foundation support and anchoring system.

~~40-9.~~ "Manufactured home" means a federal housing and urban development (HUD) labeled structure, transportable in one or more sections that, in its traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty or more square feet [29.73 square meters]; that is built on a permanent chassis; that is designed to be used as a dwelling; that may or may not have a permanent foundation; that is connected to the required utilities; and that contains the plumbing, heating, air-conditioning, and electrical systems; except that such term shall include any structure that meets the size requirements and for which the manufacturer has voluntarily filed a certification required by the secretary of housing and urban development and that complies with the manufactured home construction and safety standards.

NOTE: This definition should not be interpreted to include any type of recreational vehicle that may equal or exceed the body length or width specified herein.

~~44-10.~~ "Owner" means the owner of a manufactured home or property.

~~42-11.~~ "Participating jurisdiction" means a local government entity with a building code department which has agreed to administer and inspect manufactured housing installations within the legal and extraterritorial boundaries of the jurisdiction by employing or contracting with a certified inspector.

~~43-12.~~ "Registered installer" means an installer that has registered with the division and is in compliance with the manufactured home installation program requirements.

~~44-13.~~ "Standards" means the manufacturer's installation instructions or alternate federal standards adopted by the division. The division may issue interpretations of the standards to be followed during installations and inspections. A local jurisdiction may enact additional standards concerning unique public safety requirements, such as weight restrictions for snow loads or wind shear factors, but must provide these requirements in writing to the division of community services before enacting and enforcing them.

History: Effective January 1, 2006; [amended effective July 1, 2020.](#)

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-04. Inquiries.

Inquiries about this program may be addressed to:

Manufactured Home Installation Program Manager
North Dakota Department of Commerce
Division of Community Services
~~Department of Commerce~~
1600 East Century Avenue, Suite 2
Bismarck, ND 58503

History: Effective January 1, 2006; [amended effective July 1, 2020.](#)

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-06. Installers of manufactured homes - Registration.

Manufactured home installers in North Dakota shall first register with the division. If any of the application information for the registered installer changes after issuance of the registration, the registered installer shall notify the division in writing within thirty days from the date of the change. ~~The division may suspend, revoke, or deny renewal of a registration if the registered installer fails to notify the division of any change in the application.~~ A registration shall not be transferred nor assigned to another person.

At the time that an initial application for registration is filed, the following must be submitted:

1. Name of the installer and company;
2. Proof in the form of a copy of a valid driver's license or certificate of birth that the applicant is at least eighteen years of age;
3. Evidence from the applicant of attendance at training provided by the state ~~in conjunction with the North Dakota manufactured housing association~~ or state-approved online course and passage of the North Dakota installation program examination, ~~except for installers in business prior to the effective date of this chapter~~ at the next available training provided by the state;
4. ~~Existing installers may, in lieu of the above, provide evidence of at least three years of experience or equivalent training and testing in the installation of manufactured homes and attendance at training provided by the state in conjunction with the North Dakota manufactured housing association;~~
- ~~5.~~ 5. Proof of contractor's liability insurance in an amount not less than ~~one~~two hundred ~~fifty~~ thousand dollars. This insurance policy shall contain a provision for the immediate notification of the division upon cancellation; and
- ~~6.~~5. A letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer in the amount of ten thousand dollars for the performance of installation pursuant to the manufacturer's installation instructions. A provision shall be included for the immediate notification of the division upon cancellation.

The application for registration as a manufactured home installer shall be submitted on a form provided by the division and shall be notarized and verified by a declaration signed under penalty of perjury by the applicant. The division shall make the application and declaration available for public inspection.

The registration period is from July first of each year through June thirtieth of the following year. All registrations expire on the same date of each year, whether or not the registration is issued for all or a portion of the registration period, and registration fees will be prorated based on the date of approval for registration. A registered installer will be required to attend ~~yearly~~-training every three years provided by the state ~~in conjunction with the North Dakota manufactured housing association~~ and pass ~~at~~the written test that is given every three years ~~after initial registration~~.

Persons employed by a registered installer, as well as persons employed by an entity employing a registered installer, are not required to register when performing installation functions under the direct onsite supervision of a registered installer. The registered installer shall be responsible for supervising all employees and for the proper and competent performance of all employees working under the registered installer's supervision.

Any registered installer seeking to renew registration shall, at the time of applying for renewal, provide proof of liability insurance and letter of credit, certificate of deposit, or surety bond to run concurrent with the registration period.

Registered installers shall allow and pay for periodic oversight inspections arranged by the division to monitor the installer's performance in complying with the program and registration requirements. The frequency of oversight inspections will be based on the findings of the inspections. The division may also arrange for the inspection of any manufactured home installation performed by a registered installer. This may also occur as the result of a consumer complaint.

History: Effective January 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-09. Certified installer.

Repealed effective July 1, 2020.

~~— Any registered installer who has performed five consecutive installations that pass inspection by a certified inspector may apply to the division to be a certified installer. Evidence of complying installations shall include copies of all inspection reports made for each installation. The division will review the reports and decide if the registered installer should be granted certification. The division may require additional installations to be performed before granting certification. No fee will be charged by the division for this certification.~~

~~— A certified installer shall be authorized to post the installation authorization on the installation site. A certified installer shall also be authorized to purchase and attach installation insignias from the division. These insignias will be completed by the certified installer upon completion of the installation and attached to the manufactured homes. The certified installer shall complete and submit a required installation authorization and insignia report each month to the division. Installations by a certified installer do not require an inspection by a certified inspector. If a certified installer is performing work in a jurisdiction that is a participating jurisdiction, the installer must request the permission of the participating jurisdiction to issue its own installation authorization and to purchase and attach installation insignias. The division, or a certified inspector at the request of the division, may inspect the installation of any manufactured home performed by a certified installer.~~

~~— Certified installers shall allow and pay for periodic oversight inspections arranged by the division to monitor the installer's performance in complying with the program requirements and applicable installation standards. The frequency of oversight inspections will be based on the findings of the inspections.~~

~~**History:** Effective January 1, 2006.~~

~~**General Authority:** NDCC 54-21.3-08~~

~~**Law Implemented:** NDCC 54-21.3-08~~

108-03-01-10. Certified installation inspector.

The division may authorize individuals to perform inspections and enforce the proper installation of manufactured homes. Enforcement shall include issuance of installation authorizations and permanent insignias certifying compliance with the manufacturer's installation instructions.

Applicants for certified installation inspector shall furnish written evidence of a minimum of six months of manufactured home installation experience or equivalent training or related experience or state of North Dakota professional licensing in engineering. Applicants must have attended training provided by the state ~~in conjunction with the North Dakota manufactured housing association and must pass and passed~~ the installation program examination or passed a state-approved online course. Certified inspectors will be required to attend ~~yearly~~ training every three years provided by the state ~~in conjunction with the North Dakota manufactured housing association and pass a written test every three years after initial certification that is given.~~ The certification period is from July first of each year through June thirtieth of the following year.

~~Certification is valid for one year, and each certification will expire on the same date, regardless of the effective date, whether or not the certification is issued for all or a portion of the certification period.~~ All registrations expire on the same date of each year, whether or not the registration is issued for all or a portion of the registration period, and registration fees will be prorated based on the date of approval for registration as set in the policies and procedures.

The application for registration as a certified installation inspector must be submitted on a form provided by the division and must be notarized and verified by a declaration signed under penalty of perjury by the applicant. The division shall make the application and declaration available for public inspection.

If a local government entity has a building code department, the jurisdiction may make a written request to be the exclusive independent installation inspection agency within the jurisdiction's legal and extraterritorial boundaries as a participating jurisdiction. When approved, all manufactured home installation inspections will be made by that participating jurisdiction's certified inspector or by a certified inspector under contract to the jurisdiction. In the event of a consumer complaint, the division will make arrangements to conduct the complaint inspection within the participating jurisdiction. ~~A participating jurisdiction may permit a certified installer to issue an installation authorization and install insignias.~~ If a local government entity decides not to be a participating jurisdiction, its authority with respect to the installation of a manufactured home is limited to inspecting the construction of a permanent foundation for the home. It may not inspect the actual installation of the home.

A certified inspector shall not make inspections if the inspector has a conflict of interest that may affect the inspector's responsibility to make fair and impartial inspections.

A certified inspector and a participating jurisdiction with a certified inspector shall be authorized to issue an installation authorization and to purchase and affix insignias after the installation is completed and inspected. A certified inspector shall complete a monthly report of installation authorizations issued and insignias affixed.

Certified inspectors shall allow and pay for periodic oversight inspections arranged by the division to monitor installations that have been inspected to monitor the certified inspector's compliance with program requirements. The frequency of oversight inspections will be based on the findings of the inspections. The division may also arrange for the inspection of the installation of any manufactured home inspected by a certified inspector.

History: Effective January 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-11. Standards.

Since this program pertains only to the first-time installation of a manufactured home, the primary standards are the specifications provided in the manufacturer's installation instructions. However, alternate standards developed by the federal department of housing and urban development and adopted by the state may also be utilized. ~~The standards do not pertain to the construction of permanent foundations.~~ Standards for construction of permanent foundations are the responsibility of the local jurisdiction in which a manufactured home is installed if it varies from the manufacturer's installation instructions. Variations may require approved engineered or architectural plans.

Nothing in this section shall preclude a local government from enacting standards for manufactured homes concerning unique public safety requirements, ~~such as weight restrictions for snow loads or wind shear factors,~~ as otherwise permitted by law.

From time to time the division, in consultation with the installation committee, may issue interpretations of the standards to be followed during the course of manufactured home installations and inspections.

History: Effective January 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-12. Inspection procedures.

The division shall adopt a standard installation authorization form to be used statewide by the division and certified inspectors, a standard inspection form, and minimum inspection requirements. Inspection forms shall be maintained for a minimum of three years from the date of the attachment of the installation insignia. The number of inspections required to be performed to determine compliance with the manufacturer's installation instructions or alternate standards adopted by the division will be determined by the inspector based on the inspector's ability to properly inspect all areas required on the minimum inspection requirements and the work performed by the registered installer. Generally, however, there will be a minimum of one inspection on a single-wide and two inspections on multisection homes.

Prior to beginning the installation of a manufactured home, the owner or registered installer of a manufactured home shall make an application for an installation authorization from a participating jurisdiction or certified installation inspector. ~~Certified installers may issue their own installation authorizations.~~ The installation authorization is valid for thirty days from the date of issuance and may be extended for an additional thirty days upon written approval by the issuing entity.

Owners, and registered installers, ~~and certified installers~~ shall display an installation authorization at the site of the manufactured home to be installed until an installation insignia is attached certifying compliance with the manufacturer's installation instructions. The authorization will contain the identity of the installer and owner, a telephone number and contact person, and whether or not the installer is the owner, or a registered installer, ~~or a certified installer~~. The authorization will also include the name, address, and telephone number of the issuing entity.

During installation and inspection, a copy of the manufacturer's installation instructions or alternate standards shall be available at all times onsite. The installer shall be responsible to maintain the copy of the manufacturer's installation instructions onsite. If the manufacturer's installation instructions or alternate standards are not present at the time of the inspection, the inspector may fail the inspection and require a reinspection. All costs of the inspection and any reinspection will be borne by the installer.

The owner, installer, manufacturer, or retailer shall have the right to be present at any inspection.

When the installation of a manufactured home is found to be in compliance with the manufacturer's installation instructions or alternate standards, an insignia will be permanently attached by the inspector making the inspection. ~~A certified installer may inspect that person's own installation and permanently attach the insignia.~~ The insignia will be placed within thirtysixty inches [~~76.2~~152.4 centimeters] of the ~~expected location of the electric meter housing, electric service entry, or on the meter housing~~HUD label.

When a manufactured home installation is found not to be in compliance by a certified inspector with the manufacturer's installation instructions, the installer shall be notified in writing by the inspector. At the time of the inspection, the inspector may include in the inspection report instructions for the installer to call for a reinspection at any stage of installation to prevent coverup of any part of the installation requiring reinspection by the inspector.

The installer shall pay for any repair required to bring the installation into compliance and shall pay for any subsequent inspections.

If an installation or subsequent repair of an installation by an installer fails to meet the manufacturer's installation instructions within the time limit allowed by the inspector, the inspector shall notify the installer that the installation is in default. The installer shall be given ten working days after notification of default to bring the installation into compliance. Any independent inspector that knows of an installation that is in default and has not been corrected by subsequent repair shall request that the division arrange for an investigation of the installation.

History: Effective January 1, 2006; [amended effective July 1, 2020.](#)

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-13. Complaints.

The division may cause to be investigated any complaint concerning the installation of a manufactured home filed in writing by an owner, dealer, manufacturer, installer, or certified inspector. The division may designate a certified inspector or other qualified entity to make complaint inspections on behalf of the division. The initial costs of processing complaints will be paid through a fund established from a portion of the registration, certification, and insignia fees. If a complaint is determined to be valid, the installer [and inspector](#) must reimburse the division for the costs incurred investigating the complaint and any reinspections.

If a participating jurisdiction or a certified inspector finds an installation of a manufactured home to be in default, the jurisdiction or inspector shall file a written complaint with the division against the installer. Complaints received by telephone shall be confirmed in writing.

If the installation of a manufactured home fails the complaint inspection, the registered installer must make and pay for the repairs to bring the installation into compliance and [the installer and inspector](#) shall pay the costs associated with the complaint inspection and with any subsequent inspections. Failure of the installer to pay for repairs and [failure of the installer and inspector](#) subsequent inspections shall result in the revocation of registration and certification.

History: Effective January 1, 2006; [amended effective July 1, 2020.](#)

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-14. Suspension or revocation.

The division may permanently revoke, [or](#) temporarily suspend, ~~or fail to renew~~ the registration or certification of an installer ~~if the person or entity fails to:~~

- ~~1. File with the division each year and keep in force a letter of credit, certificate of deposit, or surety bond as required;~~
- ~~2. File with the division and keep in force the required liability insurance;~~
- ~~3. Pay assessed inspection costs;~~
- ~~4. Make any subsequent repairs that are necessary to bring the installation into compliance with the manufacturer's installation instructions;~~
- ~~5. Correct any defects or deficiencies in the installation in the time period established by the division; and~~
- ~~6. Pass periodic oversight inspections.~~

~~The division may also revoke the certification of a certified installer and replace it, at its discretion, with the status of registered installer.~~

~~—When the certification of a certified installer is revoked or suspended, the installer must immediately return to the division all unused installation insignias and the installer will lose the right to purchase and install insignias.~~

~~—When the installer's registration or certification is revoked, the installer may reapply as a registered installer one year after the date of revocation but must retest. To be considered as a certified installer, the installer will be subject to the conditions for obtaining certification.~~

~~—The division may revoke, suspend, or fail to renew the certification of any certified inspector who fails to maintain the minimum requirements for the certification, has a conflict of interest, or as a result of investigation of complaints by the division, the inspector is found to repeatedly fail to enforce the requirements of the program. The division, or a certified inspector or other qualified entity at the request of the division, may inspect the installation of any manufactured home inspected by a certified inspector.~~

Reasons for suspension include:

1. Failure to file each year and keep current, a letter of credit, certificate of deposit, or surety bond as required. License may be reinstated when bond is brought up to date.
2. Failure to file each year and keep current, the required liability insurance. License may be reinstated when insurance is brought up to date.
3. Failure to notify the division of changes in application information. License may be reinstated when information is corrected.
4. Failure to pay all assessed inspection fees. License may be reinstated when fees are paid in full.
5. Failure to make all required repairs that are needed to bring the installation into compliance with the manufacturer's installation instructions. License may be reinstated when all repairs are completed.
6. Failure to pass periodic oversight inspections. The installer has the opportunity to make needed repairs found during the oversight inspection. If the needed repairs are not made in the time allowed, the installer's license can be suspended.
7. Failure to pay all necessary training and registration fees. License may be reinstated when fees are paid in full.
8. Failure to file required monthly reports with correct information.
 - a. Inspectors may not purchase insignias if their reports are overdue.
 - b. License may be reinstated when reports are up to date.

Reasons for permanent revocation include:

1. Failure to correct any defects in the installation in the time period established by the division.
2. If there are multiple problems with homes found during oversight inspections or from complaints.
3. Multiple suspensions or problems caused by not following the rules.

The division shall track suspensions and revocations.

When the certification of a certified inspector is revoked, suspended, or not renewed, the certified inspector must immediately return to the division all unused installation insignias and the inspector will lose the right to purchase and install insignias.

History: Effective January 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-16. Installation insignias.

The division shall adopt a standard insignia to be used statewide indicating that a manufactured home is installed in compliance with the manufacturer's installation instructions.

The insignia shall include the name, address, and telephone number of the division, the date the installation was completed, and the name, address, telephone number, and registration number of the installer.

Insignias shall remain the property of the state of North Dakota and are not subject to refunds.

When an installation insignia is lost or damaged, the division must be notified in writing. ~~The division will issue a replacement insignia.~~

The division reserves the right to refuse to sell installation insignias to ~~certified installers or~~ certified inspectors based on findings of noncompliance with this chapter until findings are resolved.

The possession of unattached insignias is limited to the division, and certified inspectors, ~~and certified installers.~~ Insignias must be kept secure. If an ~~installer's or~~ inspector's certification is revoked or the ~~certified installer or~~ certified inspector is no longer in business, any labels in their possession must immediately be returned to the division.

~~— Certified installers and certified inspectors may purchase a two-month supply of installation insignias.~~

History: Effective January 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-17. Reports.

The division will establish and maintain a system of databases and procedures for reporting ~~for the following reports:~~

~~— 1. Each certified installer and certified inspector must submit a monthly report of installation authorizations issued.~~

~~— 2. Each certified inspector ~~and certified installer~~ must submit a monthly report accounting for insignias, both issued and on hand by serial number. The report is due by the fifteenth of the following month. A report is required even if no labels were issued during the month.~~

History: Effective January 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08

108-03-01-19. Fees.

The following nonrefundable fees apply:

1. Installer registration - \$150 per year.

2. Nonparticipating jurisdiction certified inspector - \$150 per year.

3. Participating jurisdiction certified inspector registration - \$50 per year.

4. Installation insignia - \$50 per label.

~~4.5.~~ Oversight inspection - ~~\$225~~\$250 per inspection.

~~5.~~ Replacement insignia - ~~\$40.~~

~~The division may charge other fees related to providing training based on the actual cost of the training materials and instructors.~~

6. Oversight reinspection fee - \$125 to both the installer and the certified inspector.

7. Training registration - \$50.

8. Training manual - \$25.

9. Late registration fee - \$25.

Certified inspectors may charge their own reasonable fees for conducting compliance inspections and reinspections.

History: Effective January 1, 2006; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-08

Law Implemented: NDCC 54-21.3-08