North Dakota Certification
Clean Air Act Section 110(a)(1) and (2)
Requirements
1997 Ozone NAAQS

Under the Clean Air Act (CAA), States must submit State Implementation Plans (SIPs) to assure compliance with the National Ambient Air Quality Standards (NAAQS). Sections 110(a)(1) and (2) of the Clean Air Act (CAA) require states to adopt and submit to the U.S. EPA "infrastructure" SIPs that address basic program elements to implement, maintain, and enforce new or revised standards including requirements for emissions inventories, monitoring, and modeling among other elements. Each of the basic or infrastructure requirements is listed below along with the corresponding State regulation, State statute or SIP element that implements the requirement.

Emission limits and other control measures: Section 110(a)(2)(A) of the Clean Air Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters.

The North Dakota Air Pollution Control Rules (NDAC 33-15) establishes control requirements for ozone and ozone precursors. The following regulations address the required control measures, means and techniques.

33-15-01 General Provisions

This chapter establishes prohibitions against creating air pollution and provides for the enforcement of all air pollution control rules. The chapter provides that all excess emissions, including emission during startup/shutdown and malfunction, are subject to enforcement action.

33-15-02 Ambient Air Quality Standards

This chapter establishes a state ambient air quality standard (SAAQS) for ozone and nitrogen oxides that are identical to the NAAQS.

33-15-07 Control of Organic Compounds Emissions

The chapter contains requirements that restrict the emissions of hydrocarbons including volatile organic compounds (VOC) which are precursors of ozone.

33-15-08 Control of Air Pollution form Vehicles and Other Internal Combustion Engines

The chapter prohibits the disabling of any air pollution control devices and a general prohibition on causing air pollution.

33-15-12 Standards of Performance for New Stationary Sources

The chapter incorporates by reference the standards in 40 CFR 60.

33-15-13 Emission Standards for Hazardous Air Pollutants

The chapter incorporates the standards in 40 CFR 61.

33-15-14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate

The chapter provides a preconstruction permitting program for both major and minor sources, a federally enforceable state operating permit program (FESOP) for minor sources, and a Title V Permit to Operate program for major sources.

33-15-15 Prevention of Significant Deterioration of Air Quality

The chapter incorporates by reference the PSD requirements in 40 CFR 52.21.

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33-15-17 Restriction of Fugitive Emissions

The chapter establishes criteria for the control of fugitive emissions (including emissions that are precursors of ozone).

33-15-18 Stack Heights

The chapter prohibits dispersion of air contaminants through the use of stacks that exceed good engineering practice (GEP).

33-15-19 Visibility Protection

The chapter establishes requirements for the review of major stationary sources and prohibits a source from having an adverse impact on any Class I area.

33-15-20 Control of emissions From Oil and Gas Production Facilities

The chapter contains requirements for the control of emissions from oil wells as well as a registration system for these wells.

33-15-21 Acid Rain Program

This chapter incorporates by reference the requirements of 40 CFR 72, 75 and 76. Control of nitrogen oxides may directly affect the formation of ozone.

33-15-22 Emission Standards for Hazardous Air Pollutants for Source Categories

This chapter incorporates by reference the standards in 40 CFR 63.

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33-15-25 Regional Haze Requirements

The chapter provides for the application of Best Available Retrofit Technology (BART) to affected sources.

A copy of these rules are attached to this analysis.

The North Dakota Century Code (NDCC), Chapter 23-25, Air Pollution Control (Appendix B of the SIP), in Section 23-25-03 provides the following general authority to regulate sources of ozone or ozone precursors. This section states that the Department shall:

> *NDCC 23-25-03.6 - Provide rules and regulations relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the Department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit such information as may be necessary to permit the Department to make such determination.*
>
> *NDCC 23-25-03.7 – Establish ambient air quality standards for the state which may vary according to appropriate areas.*
>
> *NDCC 23-25-03.8 – Formulate and promulgate emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards.*

Ambient air quality monitoring/data system: Section 110(a)(2)(B) of the CAA requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to EPA.

The 2011 Annual Monitoring Network Plan for North Dakota (submitted to EPA in July 2010 and approved September 2010) provides for an ambient air quality monitoring system in the State.

NDCC 23-25-03 provides the authority for the Department to conduct ambient air monitoring. This subsection states that the Department shall:

> *NDCC 23-25-03.2 – Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.*
>
> *NDCC 23-25-03.10 – Require the owner or operator or a regulated air contaminant source to establish and maintain such records; make such reports; install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures; and provide such other information as may be required.*

Ambient monitoring is covered in Chapter 6 of the North Dakota SIP. It provides for design and operation of a monitoring network, reporting of data obtained from the monitors, and an annual network review including notification to EPA of any changes, and public notification of exceedances of the NAAQS.

Program for enforcement of control measures: Section 110(a)(2)(C) requires SIPs to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources as necessary to assure that the NAAQS are achieved, including a permit program as required in parts C and D.

NDCC 23-15-10, Enforcement – Penalties – Injunctions, provides authority for enforcement of the NDAPCR and specifies the potential penalties for such violation. NDAC 33-15-01-17,

Enforcement, provides general interpretation of enforcement of the North Dakota Air Pollution Control Rules (NDAPCR).

The following regulations within the NDAPCR provide for the permitting of sources of ozone or its precursors:

NDAC 33-15-14-02	:	Permit to Construct
NDAC 33-15-15	:	Prevention of Significant Deterioration
NDAC 33-15-14-03	:	Minor Source Permit to Operate
NDAC 33-15-14-06	:	Title V Permit to Operate

Authority for the permitting programs is found in NDCC 23-25-03 which states that the Department shall:

> *NDCC 23-25-03.6 - Provide rules and regulations relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the Department determines will prevent the attainment or maintenance of any ambient air standard, and require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit such information as may be necessary to permit the Department to make such determination.*
>
> and
>
> *NDCC 23-25-04.1 - Permits and Registration*
>
> 1. *No person shall construct, install, modify, use or operate an air contaminant source designated by regulation, capable of causing or contributing to air pollution, either directly or indirectly, without a permit from the Department or in violation of any conditions imposed by such permit.*

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2. *The Department shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.*

3. *The Department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.*

4. *Possession of an approved permit or registration certificate does not relieve any person of the responsibility to comply with applicable emission limitations or with any other provision of law or regulations adopted pursuant thereto and does not relieve any person from the requirement that that person possess a valid contractor's license issued under Chapter 43-07.*

5. *The Department by rule or regulation may provide for registration and registration renewal of certain air contaminant sources in lieu of the permit required pursuant to this section.*

6. *The Department may exempt by rule or regulation certain air contaminant sources from the permit or registration requirements set forth in this section when the Department makes a finding that the exemption of such sources of air contaminants will not be contrary to section 23-25-01.1.*

Interstate transport: Section 110(a)(2)(D) of the CAA requires SIPs to contain adequate provisions prohibiting any source or other type of emissions activity in one State from 1) contributing significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS), 2) interfering with maintenance of the NAAQS, and 3) interfering with measures required to prevent significant deterioration or interfering with the implementation of plans related to regional haze or visibility in another State.

The following regulations and SIP provisions address interstate transport:

NDAC 33-15-15	:	Prevention of Significant Deterioration
NDAC 33-15-19	:	Visibility Protection
NDAC 33-15-25	:	Regional Haze Requirements
SIP Section 7.8	:	Interstate Transport of Air Pollution
SIP	:	North Dakota State Implementation Plan for Regional Haze (February 24, 2010)

NDCC 23-25-03 states that the Department shall:

> *NDCC 23-25-03.6 – Provide rules and regulations relating to the construction of any new direct or indirect air containment source or modification of any existing direct or indirect air containment source which the Department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit such information as may be necessary to permit the Department to make such determination.*

A. Significant Contribution Requirement of Section 110(a)(2)(D)(i).

Section 110(a)(2)(D)(i)(I) specifically provides that each state's SIP must contain adequate provisions to prohibit air pollutant emissions from within the state that significantly contribute to nonattainment of the NAAQS in any other state. The state's submission must explain whether or not emissions from the state have this impact and, if so, address the impact.

North Dakota submitted this demonstration in April 2009 (see attachments) and EPA approved it on June 3, 2010 (75 FR 31290-31305). Sources in North Dakota do not significantly contribute to nonattainment areas in other states.

B. Interfere with Maintenance Requirement of Section 110(a)(2)(D)

Section 110(a)(2)(D)(i)(I) specifically provides that each state's SIP must contain adequate provisions to prohibit air pollutant emissions from within the state that interfere with maintenance of the NAAQS in any other state. States' submission must address this independent requirement of the statute. This provision requires evaluation of impacts on areas of other states that are meeting the ozone NAAQS, not merely areas formerly designated nonattainment that are subject to maintenance SIP. Therefore, the SIP must explain whether or not emissions from the state have this impact and, if so, address the impact.

North Dakota submitted this analysis in April 2009 (see attachments). EPA approved this portion of the analysis on November 22, 2010 (75 FR 71023-71029).

C. PSD sub-element of 110(a)(2)(D)(i)(II) and 110(a)(2)(J):

These sections require that sources in North Dakota may not interfere with measures required to be included in the SIP for any other State under Part C to prevent significant deterioration of air quality and requires North Dakota to have in place a prevention of significant determination program for sources in the North Dakota.

The Department has adopted the Federal PSD rules by reference as they exist on July 2, 2010. The Department is in the process of adopting the PSD rules as they exist on January 1, 2012. This will incorporate all existing requirements. The PSD rules require compliance with the ozone NAAQS incorporated in NDAC 33-15-02. EPA approved this element of the Department's April 2009 analysis on June 3, 2010 (75 FR 31290 – 31305).

D. Visibility sub-element of 110(a)(2)(D)(i)(II) and 110(a)(2)(J):

These sections require that sources in North Dakota may not interfere with measures required for any other state for visibility protection and requires North Dakota to have in-place measures to protect visibility in North Dakota Class I areas.

North Dakota has in place a SIP to address visibility impairment for major source (PSD) permitting (NDAC 33-15-15), specific visibility impairment (RAVI) and plume blight (NDAC 33-15-19). To date, no sources in North Dakota have been identified as causing "reasonably attributable visibility impairment" in any Federal Class I area. The Department has prepared and submitted to EPA (March 3, 2010) a SIP revision to address regional haze for the current planning period. This includes a long-term strategy which provides for improvement in the most impaired days and no degradation in the least impaired days. This Regional Haze SIP will satisfy the requirements of the visibility sub-element.

Section 110(a)(2)(D)(ii): Interstate and International Transport Provisions:

Section 110(a)(2)(D)(ii) requires that each plan include measures that ensure compliance with the applicable requirements of Sections 126 and 115 relating to interstate and international pollution abatement. Section 126(a) of the Clean Air Act (CAA) requires each SIP to include provisions to notify neighboring states of potential impacts from a new or modified source.

The North Dakota PSD rules provide for notifying neighboring states whose land may be significantly affected by emissions from a new or modified source. NDAC 33-15-15-01.2(q)(2)(d) states:

NDAC-33-15-15-01.(q)(2)(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.

Similar notification requirements are provided for minor sources under NDAC 33-15-14-02.6.b(4).

Adequate personnel, funding and authority: Section 110(a)(2)(E) of the CAA requires states to provide for adequate personnel, funding and legal authority under State law to carry out its SIP and related issues.

The authority for the Department to carry out the requirements of the SIP is found in NDCC 23-25-03 which states:

23-25-03. Power and duties to the Department. The Department shall:

- *Encourage the voluntary cooperation of persons or affected groups to achieve the purposes of this chapter.*

- *Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.*

- *Encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement and control.*

- *Advise, counsel, and cooperate with other public agencies and with affected groups and industries.*

- *Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial procedures.*

- *Provide rules and regulations relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air containment source which the Department determines will prevent the attainment or maintenance of any ambient air quality standards, and require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit such information as may be necessary to permit the Department to make such determination.*

- *Establish ambient air quality standards for the state which may vary according to appropriate areas.*

- *Formulate and promulgate emission control requirements for the prevention, abatement, and control of air pollution in the state including achievement of ambient air quality standards.*

- *Hold hearings relating to any aspect or matter in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence.*

- *Require the owner or operator of a regulated air containment source to establish and maintain such records; make such reports; install, use and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures; and provide such other information as may be required.*

- *Provide by rules and procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and responsibilities of which are delegatable to the state by the United States*

environmental protection agency. Such rules may include any and all enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and actions of emission rights as provided by the Act. The Department shall develop and implement such federal programs if the Department determines there is a benefit to the state.

- *Provide by rules a program for implementing lead-based paint remediation training, certification and performance requirements in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227 and 233.*

In addition, NDAC 33-15-01-03 states:

> *NDAC 33-15-01-03. Authority. The North Dakota State Department of Health has been authorized to provide and administer this article under the provisions of North Dakota Century Code chapter 23-25.*

The provisions of the SIP are carried out by the Department of Health. The only portion of the SIP that has been delegated is approval of open burning requests. Several local Health Districts have been delegated this authority. There are no other agencies, departments or local units that have been delegated authority to develop any portion of the SIP.

NDAC 33-15-23, Fees, provides the regulatory mechanism for requiring stationary sources that emit air pollutants to pay a fee based on the quantity of emissions emitted. Fees are collected annually from both major sources and minor sources. In addition, fees are charged for reviewing applications for the construction of new or modified sources. Title V fees are adjusted annually to match the change in the consumer price index. The North Dakota Title V Permit to Operate program was given full approval by EPA effective August 16, 1999 (64 FR 32433).

The Department does not anticipate any unusual amount of construction of new significant emission sources that would affect ozone concentrations during the next five years. Therefore, no additional personnel will be required to assure compliance with the ozone NAAQS. The Department currently has 11 people dedicated to permitting of new or modified sources of air pollution and the enforcement of the air pollution control rules. In addition, another 5 people are dedicated to monitoring air quality.

NDCC 23-25-04.2 provides the statutory authority for collecting fees.

> *NDCC 23-25-04.2, Fees – Deposit in operating fund. The Department by rule or regulation may prescribe and provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, of taking action on the requested permit or registration certificate, and conducting an inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit or registration fees must be deposited in the Department operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.*

Resources for the operation of the air pollution control program are also addressed in Section 9 of the SIP which was updated in April 2009. The Department has determined that it has adequate resources to implement the 1997 ozone NAAQS. The Department has addressed the legal authority to collect fees necessary to implement the air pollution control program in section 2.11 of the SIP.

The regulations that control emissions of ozone are described in the section titled “Emission limits and other control measures”.

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Stationary source monitoring system: Section 110(a)(2)(F) of the CAA requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports.

The following State regulations require monitoring of emissions from stationary sources:

NDAC 33-15-14-02.9
NDAC 33-15-14-03.6
NDAC 33-15-14-06.5

Statutory authority for the monitoring is found in NDCC 23-25-03 which states that the Department shall:

> *NDCC 23-25-03.10 – Require the owner or operator of a regulated air containment source to establish and maintain such records; make such reports; install, use and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures; and provide such other information as may be required.*

Source surveillance is also addressed in Chapter 8 of the SIP. This chapter provides for the permitting of sources, inspection of the sources and compliance determinations.

Emergency episodes: Section 110(a)(2)(G) of the CAA requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

NDAC 33-15-11, Prevention of Air Pollution Emergency Episodes, provides the means to implement emergency air pollution episode measures and is authorized by NDCC 23-25-03 which states that the Department shall:

NDCC 23-25-03.5 – Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial procedures.

NDCC 28-32-32 states that in an emergency, the administrative agency (the Department) may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to public health, safety or welfare.

In addition, NDCC 23-25-08 states "*when an emergency exists requiring immediate action to protect the public health and safety, the Department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet this emergency.*"

Ambient monitoring data from 2009 through 2011 indicates the maximum 8-hour design value at any monitoring site is 61 ppb. Based on the monitoring results, a violation of the 1997 ozone NAAQS is very unlikely.

Future SIP revisions: Section 110(a)(2)(H) of the CAA requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate. NDCC 23-25-03 states that the Department shall:

NDCC 23-25-03.8 –Formulate and promulgate emission control requirements for the prevention, abatement and control of air pollution in this state including achievement of ambient air quality standards.

NDCC 23-25-03.12 – Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and responsibilities of which are delegatable to the state by the United States environmental

protection agency. Such rules may include any and all enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and auctions of emissions rights as provided by the Act. The Department shall develop and implement such as federal programs if the Department determines there is a benefit to the state.

The North Dakota SIP, Section 1.14, commits the Department to making the necessary revisions. Section 1.14 states "The Department will revise this implementation plan as may be necessary to take account of revisions of the National Ambient Air Quality Standards (both primary and secondary) or the availability of improved or more expeditious methods of attaining these standards. The Department will also revise the implementation plan whenever the Administrator of the United States Environmental Protection Agency finds, on the basis of information available to the Administrator, that the plan is substantially inadequate to attain the National Ambient Air Quality Standards which it implements or to otherwise comply with additional requirements established under the Federal Clean Air Act. The Department will make such revision only if the finding of the Administrator is in accordance with the requirements of the Federal Clean Air Act."

Consultation with government officials: Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation.

North Dakota has no transportation control plans, maintenance plans or nonattainment areas. For preconstruction review, the public participation procedures of NDAC 33-15-14-02.6 are followed for minor sources. For sources subject to PSD review, the public participation procedures in paragraph (q) of NDAC 33-15-15-01.2 are followed. Both NDAC 33-15-14-02.6 and 33-15-15-01.2(q) require notification of the chief executive of the city or county a source is proposing to locate, any regional land use planning agency, and any state, federal land manager or Indian body whose lands will be significantly affected by a proposed source's emissions.

Consultation with the FLMs for PSD projects is accomplished in accordance with 40 CFR 52.21 (p) which is incorporated by reference into NDAC 33-15-15-01.2. For enforcement orders, the requirements of NDCC 23-25-08 and NDCC 28-32 are followed. Consultation with other government agencies is addressed in Chapter 10 of the SIP. This Chapter of the SIP commits the Department to consultation with adjacent state, local government and other state agencies whenever a SIP revision is required.

Public notification: Section 110(a)(2)(J) of the CAA further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

The North Dakota SIP, Section 6.9, commits the Department to notification of the public, on a regular basis, whenever an ambient air quality standard is exceeded. The public will be advised of the potential health effects, measures which can be taken to prevent future exceedances, and ways they can participate in the regulatory and other efforts to improve air quality. The authority for this notification is found in NDCC 23-25-06. In addition, NDAC 33-15-11-03.1 requires the Department to notify the public whenever an air pollution emergency has been determined to exist.

PSD and visibility protection: Section 110(a)(2)(J) of the CAA requires states to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection.

The Department has adopted the Federal PSD rules by reference as they exist on July 2, 2010. The Department is in the process of adopting the PSD rules as they exist on January 1, 2012. This will incorporate all existing requirements for ozone. Both of these PSD rule revisions require compliance with the ozone NAAQS. The “Tailoring Rule” for greenhouse gases has been adopted into North Dakota’s PSD rules (April 2011). PSD applicants must address any applicable requirements for greenhouse gases.

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North Dakota has in place a SIP to address visibility for major source (PSD) permitting (NDAC 33-15-15), specific visibility impairment (RAVI), and plume blight (NDAC 33-15-19). To date, no sources in North Dakota have been identified as causing "reasonably attributable visibility impairment" in any Federal Class I area. The Department has prepared and submitted to EPA (March 3, 2010) a SIP revision to address regional haze for the current planning period. That plan will address any visibility impacts. This includes a long-term strategy which provides for improvement in the most impaired days and no degradation in the least impaired days. EPA is currently reviewing that plan.

Air quality modeling/data: Section 110(a)(2)(K) requires SIPs to provide for the performance of air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and the submission of such data to EPA upon request.

Air quality modeling is addressed in Section 7.7 of the North Dakota SIP. This section commits the Department to performing air quality modeling to predict the impact of a source on air quality. The section also commits the Department to providing data to EPA on air quality modeling upon request.

Modeling for minor sources is addressed in NDAC 33-15-14-02.4 while modeling for major PSD sources is address in 40 CFR 52.21(k), (l), (m), (n) and (o) as incorporated into NDAC 33-15-15-01.2. Authority for requiring modeling is in NDCC 23-25-03 which states the Department shall:

> *NDCC 23-25-03-02 - Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.*
>
> and
>
> *NDCC 23-25-03-12 - Provide by rules and procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and*

responsibilities of which are delegatable to the state by the United States Environmental Protection Agency. Such rules may include any and all enforceable ambient standards, emissions limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and auctions of emissions rights as provided by the Act. The Department shall develop and implement such federal programs if the Department determines there is a benefit to the state.

Permitting fees: Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, acting upon, implementing and enforcing a permit until such fee requirement is superseded by EPA approval of a fee program under Title V of the Clean Air Act.

NDAC 33-15-23, Fees, establishes fees for processing Permit to Construct applications, annual operating fees for minor sources and fees for major sources under the Title V Permit to Operate program. These fees are used for reviewing, approving, implementing and enforcing a permit. The authority for the fees is found in NDCC 23-25-04.2.

NDCC 23-25-04.2. Fees – Deposit in operating fund: The Department by rule or regulation may prescribe and provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates. The permit or registration certificate fees for the issuance of the anticipated cost of filing and processing the application, of taking action on the requested permit or registration certificate, and conducting an inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit or registration fees must be deposited in the Department operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

The Department collects fees for reviewing permit applications, annual minor source Permit to Operate fees and Title V Permit to Operate fees. Title V fees are revised each year based on the

increase in the Consumer Price Index. North Dakota's Title V Permit to Operate program received full approval from EPA effective August 16, 1999 (64 FR 32433).

Consultation/participation by affected local entities: Section 110(a)(2)(M) requires SIPs to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

No other state or local entities are responsible for developing the SIP. Implementation and enforcement of open burning request approvals has been delegated to several local health units. The Department retains responsibility for ensuring adequate implementation of all SIP revisions. No other portions of the SIP have been delegated to other organizations.

The North Dakota SIP, Chapter 10, addresses the consultation process the Department will use to coordinate with local political subdivisions that are affected by any SIP revisions. NDCC 23-25-03 also requires consultation by stating that the Department shall:

> *NDCC 23-25-03.4 – Advise, consult and cooperate with other public agencies and with affected groups and industries.*

Intergovernmental cooperation, Section 10 of North Dakota's SIP, addresses the process for sharing information and working with other government agencies.

Regarding SIP and rule revisions, NDCC 23-25-02.6 requires public notice, the opportunity for public comment, and a public hearing. It states: "The advisory council shall hold a public hearing to consider and recommend the adoption, amendment, or repeal of rules, regulations, and standards as provided in this chapter. Notice of such public hearing or hearings must be given by publication of a notice of such hearing or hearings in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least thirty days prior to the first hearing. The hearing or hearings must be held in the

state capitol in Bismarck and interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations and standards. The advisory council shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the Department concerning the administration of this chapter."

North Dakota has no nonattainment areas. Therefore, consultation with affected entities is not required for transportation conformity or other nonattainment area SIP requirements.

State Boards: Section 128 requires that any board or body that approves permits or enforcement orders must have at least a majority of its members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement actions under the Clean Air Act. In addition, members of such boards or bodies, or the head of an executive agency with similar powers, must adequately disclose any conflict of interest.

In North Dakota there are no boards or bodies that approve permits or enforcement orders. The State Health Officer is the head of the North Dakota department of Health which includes the Air Pollution Control program. NDCC 23-01-05 states "The State Health Officer may not engage in any occupation or business that may conflict with the statutory duties of the State Health Officer …". NDCC 23-01-05 is contained in Appendix B of the SIP. This conflict of interest requirement is more stringent than the requirements of Clean Air Act Section 128. The requirements of Section 128 are met by the current SIP.

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Attachments

1. NDCC 23-25
2. NDCC 28-32
3. NDCC 23-01
4. NDAC 33-15-01
5. NDAC 33-15-02
6. NDAC 33-15-07
7. NDAC 33-15-08
8. NDAC 33-15-11
9. NDAC 33-15-12
10. NDAC 33-15-13
11. NDAC 33-15-14
12. NDAC 33-15-15
13. NDAC 33-15-17
14. NDAC 33-15-18
15. NDAC 33-15-19
16. NDAC 33-15-20
17. NDAC 33-15-21
18. NDAC 33-15-22
19. NDAC 33-15-23
20. NDAC 33-15-25
21. Interstate Transport Submittal

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CHAPTER 23-25
AIR POLLUTION CONTROL

23-25-01. Definitions.

For purposes of this chapter, the following words and phrases are defined:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination thereof.
2. "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, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
3. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded.
4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, handling, or disposal of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.
6. "Asbestos contractor" means any partnership, firm, association, corporation, limited liability company, or sole proprietorship that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any person engaged in the abatement of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material, except for individuals engaged in abatement at their private residence.
8. "Emission" means a release of air contaminants into the ambient air.
9. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
10. "Friable asbestos material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.
11. "Indirect air contaminant source" means any facility, building, structure, or installation, or any combination thereof, which can reasonably be expected to cause or induce emissions of air contaminants.
12. "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.
13. "Person" means any individual, corporation, limited liability company, 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 agency, or agency of the foregoing.

23-25-01.1. Declaration of public policy and legislative intent.

It is hereby declared to be the public policy of this state and the legislative intent of this chapter 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 of the people, and to facilitate the enjoyment of the natural attractions of this state.

23-25-02. State air pollution control agency - Advisory council.

1. The state department of health, hereinafter referred to as the department, is hereby designated as the agency to administer and coordinate a statewide program of air pollution control consistent with the provisions of this chapter.

2. There is hereby established an air pollution control advisory council, hereinafter referred to as the advisory council, of nine members to include the state health officer, the state geologist, the director of the department of transportation, and six other members to be appointed by the governor, one of whom must be a representative of county or municipal government, one a representative of the solid fuels industry, one a representative of the fluid and gas fuels industry, one a representative of the environmental sciences, and two appointed at large.
3. The term of office for the appointed members of the advisory council must be six years, but of those four first appointed, two shall serve for two years and two for four years, and the lengths of their terms must be designated by the governor at the time of appointment.
4. The advisory council shall select its own chairman from among its members. The state health officer, state geologist, and director of the department of transportation each may designate a principal deputy or assistant to act in the officer's place and stead. The chief sanitary engineer of the state department of health, or that officer's designated assistant, must be the principal administrative officer of the council.
5. The advisory council shall hold at least one regular meeting each year, and such additional meetings as the chairman deems necessary, at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on the written request of any three members. Five members constitute a quorum.
6. The advisory council shall hold a public hearing to consider and recommend the adoption, amendment, or repeal of rules, regulations, and standards as provided in this chapter. Notice of such public hearing or hearings must be given by publication of a notice of such hearing or hearings in each of the official county newspapers within the state of North Dakota by at least two publications, one week apart, the last publication being at least thirty days prior to the first hearing. The hearing or hearings must be held in the state capitol in Bismarck and interested parties may present witnesses and other evidence pertinent and relevant to proposed rules, regulations, and standards. The advisory council shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

23-25-03. Power and duties of the department.

The department shall:

1. Encourage the voluntary cooperation of persons or affected groups to achieve the purposes of this chapter.
2. Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.
3. Encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement, and control.
4. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
5. Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial procedures.
6. Provide rules and regulations relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit such information as may be necessary to permit the department to make such determination.
7. Establish ambient air quality standards for the state which may vary according to appropriate areas.
8. Formulate and promulgate emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards.

9. Hold hearings relating to any aspect or matter in the administration of this chapter, and in connection therewith, compel the attendance of witnesses and the production of evidence.
10. Require the owner or operator of a regulated air contaminant source to establish and maintain such records; make such reports; install, use, and maintain such monitoring equipment or methods; sample such emissions in accordance with such methods, at such locations, intervals, and procedures; and provide such other information as may be required.
11. Provide by rules and regulations a procedure for the handling of applications for the granting of a variance to any person who owns or is in control of any plant, establishment, process, or equipment. The granting of a variance is not a right of the applicant but must be in the discretion of the department.
12. Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. Such rules may include any and all enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and auctions of emissions rights as provided by the Act. The department shall develop and implement such federal programs if the department determines there is a benefit to the state.
13. Provide by rules a program for implementing lead-based paint remediation training, certification, and performance requirements in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.

After consultation with the advisory council, the department is empowered to adopt, amend, and repeal rules and regulations implementing and consistent with this chapter.

23-25-03.1. Licensing of asbestos and lead-based paint contractors and certification of asbestos and lead-based paint workers.

The department is charged with the responsibility of administering and enforcing a licensing program for asbestos contractors and lead-based paint contractors and a certification program for asbestos workers and lead-based paint workers and is given and charged with the following powers and duties:

1. To require training of, and to examine, asbestos workers and lead-based paint workers.
2. To establish standards and procedures for the licensing of contractors, and the certification of asbestos workers engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and to establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the Federal Clean Air Act, as amended.
3. To establish standards and procedures for the licensing of contractors and the certification of lead-based paint workers engaging in the abatement of lead-based paint and to establish performance standards for lead-based paint abatement in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.
4. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates, and to suspend or revoke certificates for cause after notice and opportunity for hearing.
5. To establish an annual fee and renewal fees for licensing asbestos contractors and lead-based paint contractors and certifying asbestos and lead-based paint workers and to establish examination fees for asbestos and lead-based paint workers under section 23-25-04.2. The annual, renewal, and examination fees for lead-based contractors and workers may not exceed those charged to asbestos contractors and workers.

6. To establish indoor environmental nonoccupational air quality standards for asbestos.
7. To adopt and enforce rules as necessary for the implementation of this section.

For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

23-25-03.2. Sulfur dioxide ambient air quality standards more strict than federal standards prohibited.

The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. Any ambient air quality standards that have been adopted by the department for sulfur dioxide that are more strict than federal rules or standards under the Clean Air Act, or for which there are no corresponding federal rules or standards, are void as to coal conversion facilities and petroleum refineries. However, the department may adopt rules for dealing with exposures of less than one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory program for dealing with short-term exposures to sulfur dioxide that may be established under the Clean Air Act. Any intervention levels or standards set forth in the rules, however, may not be more strict than federal levels or standards recommended or adopted under the federal program. In adopting the rules, the department shall follow all other provisions of state law governing the department's adoption of ambient air quality rules when there are no mandatory corresponding federal rules or standards.

23-25-03.3. Requirements for adoption of air quality rules more strict than federal standards.

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If at any time the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information that were not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days prior to the hearing that clearly identifies the additional or amended studies, analyses, opinions, data, or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:
   a. "Cost-benefit analysis" means both the analysis and the written document that contains:

(1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions including time periods, specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.

(2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department shall not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.

b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:

(1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.

(2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.

(3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.

(4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department in preparing the risk assessment shall:

(a) Rely only upon environmental protection agency-approved air dispersion models.

(b) Identify the assumptions, inferences, and models that materially affect the outcome.

(c) Explain the basis for any choices.

(d) Identify any policy decisions or assumptions.

(e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.

(f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.

(5) The range and distribution of exposures and risks derived from the risk assessment.

c. The risk assessment and cost-benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the air pollution control advisory council.

4. This section applies to any petition submitted to the department pursuant to section 23-01-04.1 that identifies air quality rules or standards affecting coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section

23-01-04.1. This section also applies to any petitions filed under section 23-01-04.1 affecting coal conversion facilities or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply, however, to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to any new rules governing such matters.

23-25-04. Classification and reporting of air pollution sources.

1. After consultation with the advisory council the department, by rule or regulation, may classify air contaminant sources according to levels and types of emissions and other criteria which relate to air pollution and may require reporting for any of such class or classes. Classifications made pursuant to this subsection may apply to the state as a whole or to any designated area of the state and must be made with special reference to effects on health, economic, and social factors and physical effects on property.
2. Any person operating or responsible for the operation of air contaminant sources of any class for which rules and regulations of the department require reporting shall make reports containing information as may be required by the department relevant to air pollution.

23-25-04.1. Permits or registration.

1. No person shall construct, install, modify, use, or operate an air contaminant source designated by regulation, capable of causing or contributing to air pollution, either directly or indirectly, without a permit from the department or in violation of any conditions imposed by such permit.
2. The department shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.
3. The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.
4. Possession of an approved permit or registration certificate does not relieve any person of the responsibility to comply with applicable emission limitations or with any other provision of law or regulations adopted pursuant thereto and does not relieve any person from the requirement that that person possess a valid contractor's license issued under chapter 43-07.
5. The department by rule or regulation may provide for registration and registration renewal of certain air contaminant sources in lieu of the permit required pursuant to this section.
6. The department may exempt by rule and regulation certain air contaminant sources from the permit or registration requirements set forth in this section when the department makes a finding that the exemption of such sources of air contaminants will not be contrary to section 23-25-01.1.

23-25-04.2. Fees - Deposit in operating fund.

The department by rule or regulation may prescribe and provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, of taking action on the requested permit or registration certificate, and conducting an inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit or registration fees must be deposited in the department operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23-25-05. Right of onsite inspection.

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules and regulations enforced pursuant thereto. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.
2. The department may conduct tests and take samples of air contaminants, fuel, process material, and other materials which affect or may affect emission of air contaminants from any source, and shall have the power to have access to and copy any records required by department rules or regulations to be maintained, and to inspect monitoring equipment located on the premises. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and such other safe and proper sampling and testing facilities exclusive of instruments and sensing devices as may be necessary for proper determination of the emission of air contaminants. If an authorized representative of the department, during the course of an inspection, obtains a sample of air contaminant, fuel, process material, or other material, that representative shall issue a receipt for the sample obtained to the owner or operator of, or person responsible for, the source tested.
3. For the purpose of ascertaining the state of compliance with this chapter and any applicable rules, any duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

23-25-06. Confidentiality of records.

1. Any record, report, or information obtained under this chapter must be available to the public, except that upon a showing satisfactory to the department that the record, report, or information, or particular part thereof, other than emission data, to which the department has access under this chapter, if made public, would divulge trade secrets, the department shall consider the record, report, or information or particular portion thereof confidential in the administration of this chapter.
2. Nothing herein may be construed to prevent disclosure of any report, or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local air pollution control laws, or when relevant in any proceeding under this chapter.

23-25-07. Emission control requirements.

Repealed by S.L. 1975, ch. 231, § 11.

23-25-08. Administrative procedure and judicial review.

Any proceeding under this chapter for:

1. The issuance or modification of rules and regulations including emergency orders relating to control of air pollution; or
2. Determining compliance with rules and regulations of the department,

must be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as therein provided. When an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet this emergency. Notwithstanding any provision of this chapter, such order must be effective immediately, but on application to the department an interested person must be afforded a hearing before the state health council within ten days. On the basis of such hearing,

the emergency order must be continued, modified, or revoked within thirty days after such hearing. Except as provided for in this section, notice of any hearing held under this chapter must be issued at least thirty days prior to the date specified for the hearing.

23-25-09. Injunction proceedings.
Repealed by S.L. 1975, ch. 231, § 11.

23-25-10. Enforcement - Penalties - Injunctions.

1. Any person who willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment must be by a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
4. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ten thousand dollars per day per violation.
5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

23-25-11. Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more than one year, as provided by section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that

measure seven odor concentration units or higher as measured at any of the following locations:

a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;

b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or

c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.

4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.

6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed

by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

7. a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
   (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
   (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
   (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers] and the setback for any other animal operation is one-half mile [.80 kilometer].
   (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers] and the setback for any other animal operation is three-fourths mile [1.20 kilometers].
   (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers] and the setback for any other animal operation is one mile [1.60 kilometers].

   b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the preexisting use that is closer.

   c. For purposes of this section:
   (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
   (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
   (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
   (4) One cow-calf pair equals 1.0 animal unit;
   (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
   (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
   (7) One horse equals 2.0 animal units;
   (8) One sheep or lamb equals 0.1 animal unit;
   (9) One turkey equals 0.0182 animal unit;
   (10) One chicken, other than a laying hen, equals 0.008 animal unit;
   (11) One laying hen equals 0.012 animal unit;
   (12) One duck equals 0.033 animal unit; and
   (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.

9. Neither a county nor a township may regulate or through any means impose restrictions or requirements on animal feeding operations or on other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

CHAPTER 28-32
ADMINISTRATIVE AGENCIES PRACTICE ACT

28-32-01. Definitions.

In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
   a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
   b. The adjutant general with respect to the department of emergency services.
   c. The council on the arts.
   d. The state auditor.
   e. The department of commerce with respect to the division of economic development and finance.
   f. The dairy promotion commission.
   g. The education factfinding commission.
   h. The educational technology council.
   i. The board of equalization.
   j. The board of higher education.
   k. The Indian affairs commission.
   l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.
   m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
   n. The pardon advisory board.
   o. The parks and recreation department.
   p. The parole board.
   q. The state fair association.

r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
s. The board of university and school lands except with respect to activities under chapter 47-30.1.
t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
w. The commission on legal counsel for indigents.
x. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-21 and any administrative agency that, when authorized by law, files such a complaint before such agency or any other agency.
5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
7. "Order" means any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons. The term does not include an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
    a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
    b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
        (1) Enable law violators to avoid detection;
        (2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the state.

c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.

d. A rule concerning only the physical servicing, maintenance, or care of agency-owned or agency-operated facilities or property.

e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.

h. An agency budget.

i. An opinion of the attorney general.

j. A rule adopted by an agency selection committee under section 54-44.7-03.

k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

28-32-02. Rulemaking power of agency - Organizational rule.

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.
2. In addition to other rulemaking requirements imposed by law, each agency may include in its rules a description of that portion of its organization and functions subject to this chapter and may include a statement of the general course and method of its operations and how the public may obtain information or make submissions or requests.

28-32-03. Emergency rules.

1. If the agency, with the approval of the governor, finds that emergency rulemaking is necessary, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
   a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
   b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the agency;
   c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
   d. Emergency effectiveness is necessary to meet a mandate of federal law.
3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The agency's finding, and a brief statement of the agency's reasons for the finding, must be filed with the legislative council with the final adopted emergency rule.
5. The agency shall attempt to make interim final rules known to persons who the agency can reasonably be expected to believe may have a substantial interest in them. As

used in this subsection, "substantial interest" means an interest in the effect of the rules which surpasses the common interest of all citizens. An agency adopting emergency rules shall comply with the notice requirements of section 28-32-10 which relate to emergency rules and shall provide notice to the chairman of the administrative rules committee of the emergency status, declared effective date, and grounds for emergency status of the rules under subsection 2. When notice of emergency rule adoption is received, the legislative council shall publish the notice and emergency rules on its website.

6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

28-32-04. Repeal or waiver of rules from federal guidelines.

1. An agency shall repeal or amend any existing rule that was adopted from federal guidelines and which is not relevant to state regulatory programs.
2. An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.
3. An agency shall seek a waiver from the appropriate United States agency when the United States agency is evaluating current programs or delegating or modifying programs to relieve the agency from complying with or adopting rules that are not relevant to state regulatory programs.

28-32-05. Adoption by reference of certain rules.

1. When adopting rules, an agency shall adopt by reference any applicable existing permit or procedural rules that may be adapted for use in a new or existing program.
2. An agency shall seek authorization from the appropriate United States agency to adopt by reference applicable existing permit or procedural rules that may be adapted for use in a new or existing program when the United States agency is delegating or modifying a program.

28-32-06. Force and effect of rules.

Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

28-32-07. Deadline for rules to implement statutory change.

Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

28-32-08. Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule if:
   a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
   b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:

a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
b. A description of the probable impact, including economic impact, of the proposed rule;
c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

3. Each regulatory analysis must include quantification of the data to the extent practicable.
4. The agency shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency may charge a fee for a copy of the regulatory analysis as allowed under section 44-04-18.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency proposing a rule. Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

28-32-08.1. Rules affecting small entities - Analysis - Economic impact statements - Judicial review.

1. As used in this section:
   a. "Small business" means a business entity, including its affiliates, which:
      (1) Is independently owned and operated; and
      (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
   b. "Small entity" includes small business, small organization, and small political subdivision;
   c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
   d. "Small political subdivision" means a political subdivision with a population of less than five thousand.
2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
   a. Establishment of less stringent compliance or reporting requirements for small entities;
   b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
   c. Consolidation or simplification of compliance or reporting requirements for small entities;
   d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
   e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.
3. Before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:
   a. The small entities subject to the proposed rule;
   b. The administrative and other costs required for compliance with the proposed rule;

c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
d. The probable effect of the proposed rule on state revenues; and
e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

4. For any rule subject to this section, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section. A small entity seeking judicial review under this section must file a petition for judicial review within one year from the date of final agency action.
5. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to the following agencies or divisions of agencies:
   a. Council on the arts.
   b. Beef commission.
   c. Dairy promotion commission.
   d. Dry bean council.
   e. Highway patrolmen's retirement board.
   f. Indian affairs commission.
   g. Board for Indian scholarships.
   h. State personnel board.
   i. Potato council.
   j. Board of public school education.
   k. Real estate trust account committee.
   l. Seed commission.
   m. Soil conservation committee.
   n. Oilseed council.
   o. Wheat commission.
   p. State seed arbitration board.
   q. North Dakota lottery.
6. This section does not apply to rules mandated by federal law.
7. The adopting agency shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both, prepared under this section when the committee is considering the associated rules.

28-32-08.2. Fiscal notes for administrative rules.

When an agency presents rules for administrative rules committee consideration, the agency shall provide a fiscal note or a statement in its testimony that the rules have no fiscal effect. A fiscal note must reflect the effect of the rules changes on state revenues and expenditures, including any effect on funds controlled by the agency.

28-32-09. Takings assessment.

1. An agency shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
   a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
   b. Clearly and specifically identify the purpose of the proposed rule.
   c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
   d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
   e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency reconsider the application or need for the rule. Within thirty days of receiving the request, the agency shall consider the request and shall in writing inform the landowner whether the agency intends to keep the rule in place, modify application of the rule, or repeal the rule.

3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

28-32-10. Notice of rulemaking - Hearing date.

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
   a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, identify the emergency status and declared effective date of any emergency rules, include a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number and post-office or electronic mail address at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the legislative council must be accompanied by a copy of the proposed rules.
   b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the telephone number or address to use to obtain a copy of the proposed rules, identification of the emergency status and declared effective date of any emergency rules, the address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.

2. The agency shall mail or deliver a copy of the agency's full notice to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to each person who has made a timely request to the agency for a copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to any person requesting a copy. The

agency may charge persons who are not members of the legislative assembly fees for copies of the proposed rule as allowed under section 44-04-18.

3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least twenty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least twenty days must elapse between the date of the publication of the notice and the date of the hearing. Within fifteen business days after receipt of a notice under this section, a copy of the notice must be mailed by the legislative council to any person who has paid the annual fee established under subsection 4.

28-32-11. Conduct of hearings - Notice of administrative rules committee consideration - Consideration and written record of comments.

The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. The agency shall adopt a procedure to allow interested parties to request and receive notice from the agency of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

28-32-12. Comment period.

The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least ten days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

28-32-13. Substantial compliance with rulemaking procedure.

A rule is invalid unless adopted in substantial compliance with this chapter. However, inadvertent failure to supply any person with a notice required by section 28-32-10 does not invalidate a rule. Notwithstanding subsection 2 of section 28-32-42, an action to contest the validity of a rule on the grounds of noncompliance with this chapter may not be commenced more than two years after the effective date of the rule.

28-32-14. Attorney general review of rules.

Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable or when the procedural requirements for adoption of the rule in

this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion on the rule must be filed by the adopting agency with the legislative council for publication of the rule in the North Dakota Administrative Code.
2. a. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the legislative council and not voided or held for consideration by the administrative rules committee become effective according to the following schedule:
   (1) Rules filed with the legislative council from August second through November first become effective on the immediately succeeding January first.
   (2) Rules filed with the legislative council from November second through February first become effective on the immediately succeeding April first.
   (3) Rules filed with the legislative council from February second through May first become effective on the immediately succeeding July first.
   (4) Rules filed with the legislative council from May second through August first become effective on the immediately succeeding October first.

   b. If publication is delayed for any reason other than action of the administrative rules committee, nonemergency rules, unless otherwise provided, become effective when publication would have occurred but for the delay.

   c. A rule held for consideration by the administrative rules committee becomes effective on the first effective date of rules under the schedule in subdivision a following the meeting at which that rule is reconsidered by the committee.

28-32-16. Petition for reconsideration of rule - Hearing by agency.

Any person substantially interested in the effect of a rule adopted by an administrative agency may petition such agency for a reconsideration of any such rule or for an amendment or repeal thereof. Such petition must state clearly and concisely the petitioners' alleged grounds for such reconsideration or for the proposed repeal or amendment of such rule. The agency may grant the petitioner a public hearing upon such terms and conditions as the agency may prescribe.

28-32-17. Administrative rules committee objection.

If the legislative management's administrative rules committee objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form with the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.

1. The legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The legislative council also shall maintain a permanent register of all committee objections.
2. The legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.
3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

4. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative management's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee not later than the fifteenth day of the month before the date of the administrative code supplement in which the rule change is scheduled to appear. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
   a. An absence of statutory authority.
   b. An emergency relating to public health, safety, or welfare.
   c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
   d. A conflict with state law.
   e. Arbitrariness and capriciousness.
   f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. If no representative of the agency appears before the administrative rules committee when rules are scheduled for committee consideration, those rules are held over for consideration at the next subsequent committee meeting. Rules are not considered initially considered by the committee under this subsection until a representative of the agency appears before the administrative rules committee when the rules are scheduled for committee consideration. If no representative of the agency appears before the administrative rules committee meeting to which rules are held over for consideration, the rules are void if the rules were adopted as emergency rules and for rules not adopted as emergency rules the administrative rules committee may void the rules, allow the rules to become effective, or hold over consideration of the rules to the next subsequent committee meeting. Within three business days after the administrative rules committee finds that a rule is void, the legislative council shall provide written notice of that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative management. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative management for review by the legislative management of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative management has not disapproved by motion the finding of the administrative rules committee, the rule is void.
3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be published by the legislative council as amended, repealed, or created. If requested by the agency or any interested party, a rule amended, repealed,

or created under this subsection must be reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

28-32-18.1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory authority has changed or been repealed since the rules were adopted or amended.
2. An agency may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
   a. The agency initiates the request to the administrative rules committee for consideration of the amendment or repeal;
   b. The agency provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
   c. The agency and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

28-32-19. Publication of administrative code and code supplement.

1. The legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code also must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17. The legislative council shall revise all or part of the code as often as the legislative council determines necessary.
2. The legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as determined proper. The legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The legislative council shall compile and publish the North Dakota Administrative Code supplement according to the schedule of effective dates of rules in section 28-32-15.
   a. The code supplement must contain all rules that have been filed with the legislative council or which have become effective since the compilation and publication of the preceding issue of the code supplement.
   b. The code supplement must contain all objections filed with the legislative council by the administrative rules committee pursuant to section 28-32-17.
4. The legislative council, with the consent of the adopting agency, may omit from the code or code supplement any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or code supplement contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.
5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the

code supplement shall provide a copy of the rules to any person upon request. The agency may charge a fee for a copy of the rules as allowed under section 44-04-18.

28-32-20. Printing, sales, and distribution of code and code supplement.

1. The secretary of state shall distribute the code and code supplement and shall distribute copies of the code, revisions, and the code supplement without charge to the following:
   a. Governor, one copy.
   b. Attorney general, one copy.
   c. Each supreme court judge, one copy.
   d. Each district court judge, one copy.
   e. Each county auditor of this state, for the use of county officials and the public, one copy.
   f. Supreme court library, one copy.
   g. State library, one copy.
   h. Law library of the university of North Dakota, one copy.
   i. Each of the five depository libraries in this state, one copy, upon request.
   j. Secretary of state, one copy.
   k. Legislative council, four copies.
   l. Each member of the legislative assembly, one copy, upon request.
2. The legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, the university of North Dakota law library, and the five depository libraries as designated according to subsection 1 and section 54-24-09 shall maintain a complete, current set of the code, including revisions and the code supplement.
3. The secretary of state shall make copies of and subscriptions to the code and code supplement available to any person upon payment of the appropriate subscription fee.
4. The legislative council shall determine the appropriate fee for subscribing to the code and code supplement.
5. All fees collected by the secretary of state must be deposited in the general fund of the state treasury.
6. If applicable, the administrative code, revisions to the administrative code, and the code supplement must be considered sixth-class printing under sections 46-02-04 and 46-02-09.

28-32-21. Adjudicative proceedings - Procedures.

Administrative agencies shall comply with the following procedures in all adjudicative proceedings:

1. a. For adjudicative proceedings involving a hearing on a complaint against a specific-named respondent, a complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of the proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies, including reference to the statute or rule alleged to be violated, and the relief sought.
   b. After a complaint is filed, the appropriate administrative agency shall serve a copy of the complaint upon the respondent in the manner allowed for the service of process under the North Dakota Rules of Civil Procedure at least forty-five days before the hearing on the complaint.
   c. The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice of hearing upon the respondent in the manner allowed for service under the North Dakota Rules of Civil Procedure, at least twenty days before the hearing on the complaint. Service of the notice of hearing may be waived in writing by the respondent, or the parties may agree on a definite time and place for hearing with the consent of the agency having jurisdiction.

d. A complaint may be served less than forty-five days before the time specified for a hearing on the complaint and a notice of hearing on a complaint may be served less than twenty days before the time specified for hearing if otherwise authorized by statute. However, an administrative hearing regarding the renewal, suspension, or revocation of a license may not be held fewer than ten days after the licensee has been served, personally or by certified mail, with a copy of a notice for hearing with an affidavit, complaint, specification of issues, or other document alleging violations upon which the license hearing is based.

e. A complaint may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted. If the respondent fails to answer as required within twenty days after service of the complaint, the agency may enter an order in default as the facts and law may warrant. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

f. Service is complete upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.

g. A respondent may be given less than twenty days to answer the complaint, pursuant to another statute, but no respondent may be required to answer a complaint in less than five days and an answer must be served on the complainant and the agency with which the complaint is filed at least two days before the hearing on the complaint.

h. Amended and supplemental pleadings may be served and filed with the agency in the manner allowed for amended and supplemental pleadings under the North Dakota Rules of Civil Procedure.

2. At any hearing in an adjudicative proceeding, the parties shall be afforded opportunity to present evidence and to examine and cross-examine witnesses as is permitted under sections 28-32-24 and 28-32-35.

3. a. If the adjudicative proceeding does not involve a hearing on a complaint against a specific-named respondent, the provisions of subsection 1 do not apply. Unless otherwise provided by law, the provisions of subdivisions b through d apply.

b. The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice of hearing upon all the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing. Service of the notice of hearing may be waived in writing by the parties, or the parties may agree on a definite time and place for the hearing with the consent of the agency having jurisdiction.

c. A hearing under this subsection may not be held unless the parties have been properly served with a copy of the notice of hearing as well as a written specification of issues for hearing or other document indicating the issues to be considered and determined at the hearing. In lieu of, or in addition to, a specification of issues or other document, an explanation about the nature of the hearing and the issues to be considered and determined at the hearing may be contained in the notice.

d. Service is complete upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.

28-32-22. Informal disposition.

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such

rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

28-32-23. Adjudicative proceedings - Exceptions - Rules of procedure.

Notwithstanding the requirements for standardization of procedures in adjudicative proceedings under this chapter, an administrative agency may adopt specific agency rules of procedure not inconsistent with this chapter. An administrative agency may also adopt specific agency rules of procedure when necessary to comply with requirements found elsewhere in this code or when necessary to comply with the requirements of federal statutes, rules, or standards.

28-32-24. Evidence to be considered by agency - Official notice.

1. The admissibility of evidence in any adjudicative proceeding before an administrative agency shall be determined in accordance with the North Dakota Rules of Evidence. An administrative agency, or any person conducting proceedings for it, may waive application of the North Dakota Rules of Evidence if a waiver is necessary to ascertain the substantial rights of a party to the proceeding, but only relevant evidence shall be admitted. The waiver must be specifically stated, orally or in writing, either prior to or at a hearing or other proceeding.
2. All objections offered to evidence shall be noted in the record of the proceeding. No information or evidence except that which has been offered, admitted, and made a part of the official record of the proceeding shall be considered by the administrative agency, except as otherwise provided in this chapter.
3. Upon proper objection, evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts of this state, may be excluded. In the absence of proper objection, the agency, or any person conducting a proceeding for it, may exclude objectionable evidence.
4. The North Dakota Rules of Evidence in regard to privileges apply at all stages of an administrative proceeding under this chapter.
5. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all parties are given an opportunity to cross-examine the nonparty witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention.
6. Evidence may be received in written form if doing so will expedite the proceeding without substantial prejudice to the interests of any party.
7. Official notice may be taken of any facts that could be judicially noticed in the courts of this state. Additionally, official notice may be taken of any facts as authorized in agency rules.

28-32-25. Adjudicative proceedings - Consideration of information not presented at a hearing.

In any adjudicative proceeding, an administrative agency may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by the agency, in addition to the evidence presented at the hearing. It may do so after first transmitting a copy of the information or evidence or an abstract thereof to each party of record in the proceeding. The agency must afford each party, upon written request, an opportunity to examine the information or evidence and to present its own information or evidence and to cross-examine the person furnishing the information or evidence. Any further testimony that is necessary shall be taken at a hearing to be called and held, giving at least ten days' notice. Notice must be served upon the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure. This section also applies to information officially noticed after

the hearing when the issuance of any initial or final order is based in whole or in part on the facts or material noticed.

28-32-26. Costs of investigation.

An agency may assess the costs of an investigation to a person found to be in violation of a statute or rule as a result of an adjudicative proceeding or informal disposition. The total costs assessed and any civil penalty that may be imposed as a result of violation may not exceed the statutorily authorized civil penalty for the violation. For the purposes of this section, costs mean reasonable out-of-pocket agency costs, not including any attorney's fees, actually incurred in conducting the investigation for which they may be assessed. Any such costs paid must be paid into the general fund and are appropriated as a refund to the agency for the purposes of defraying the costs of undertaking the investigation.

28-32-27. Hearing officer - Disqualification - Substitution.

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.
2. Any hearing officer is subject to disqualification for good cause shown.
3. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.
4. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.
5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed by:
   a. The attorney general, if the disqualified or unavailable person is an assistant attorney general;
   b. The agency head, if the disqualified or unavailable person is one or more members of the agency head or one or more other persons designated by the agency head;
   c. A supervising hearing officer, if the disqualified or unavailable person is a hearing officer designated from an office, pool, panel, or division of hearing officers; or
   d. The governor, in all other cases.
6. Any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the disqualified or unavailable person.
7. Any hearing officer in an administrative proceeding, from the time of appointment or designation, may exercise any authority granted by law or rule. A hearing officer may be designated to preside over the entire administrative proceeding and may issue orders accordingly. A procedural hearing officer may only issue orders in regard to the course and conduct of the hearing under statute or rule and to otherwise effect an orderly hearing. If a procedural hearing officer is designated, the agency head must be present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

28-32-28. Intervention.

An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

28-32-29. Prehearing conference.

Before a hearing, an administrative agency may conduct a prehearing conference after giving reasonable notice to all parties and other interested persons. A prehearing conference may be conducted in total or in part by making use of telephone, facsimile services, television, or other electronic means, as long as such use does not substantially prejudice or infringe on the rights and interests of any party. An administrative agency may adopt rules regarding the availability of, notice of, and procedures for prehearing conferences.

28-32-30. Default.

1. If a party fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding, the agency may enter and serve upon all parties written notice of default and a default order, including a statement of the grounds for default.
2. Within seven days after service of the default notice, order, and grounds, the party against whom default was ordered may file a written motion requesting that the default order be vacated and stating the grounds relied upon. During the time within which a party may file a written motion under this section, or at the time of issuing notice and the default order, the agency may adjourn the proceedings or conduct them without the participation of the party against whom a default order was issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. If an agency conducts further proceedings necessary to complete the administrative action without the participation of a party in default, it shall determine all the issues involved, including those affecting the defaulting party.

28-32-31. Duties of hearing officers.

All hearing officers shall:

1. Assure that proper notice has been given as required by law.
2. Conduct only hearings and related proceedings for which proper notice has been given.
3. Assure that all hearings and related proceedings are conducted in a fair and impartial manner.
4. Make recommended findings of fact and conclusions of law and issue a recommended order, when appropriate.
5. Conduct the hearing only and perform such other functions of the proceeding as requested, when an agency requests a hearing officer to preside only as a procedural hearing officer. If the hearing officer is presiding only as a procedural hearing officer, the agency head must be present at the hearing and the agency head shall make findings of fact and conclusions of law and issue a final order. The agency shall give proper notice as required by law. The procedural hearing officer may issue orders in regard to the conduct of the hearing pursuant to statute or rule and to otherwise effect an orderly and prompt disposition of the proceedings.
6. Make findings of fact and conclusions of law and issue a final order, if required by statute or requested by an agency.
7. Function only as a procedural hearing officer, when an agency requests a hearing officer to preside for a rulemaking hearing. The agency head need not be present. The agency shall give proper notice as required by law.
8. Perform any and all other functions required by law, assigned by the director of administrative hearings, or delegated to the hearing officer by the agency.

28-32-32. Emergency adjudicative proceedings.

An administrative agency may use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare.

1. In an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare.

2. In an emergency, in the absence of a specific statute, an administrative agency may serve a complaint fewer than forty-five days before the hearing and give notice of a hearing on the complaint by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party to the emergency adjudicative proceeding must be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
3. In an emergency, in the absence of a specific statute, in an adjudicative proceeding that does not involve a complaint against a specific-named respondent, an administrative agency may give notice of a hearing by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party to the emergency adjudicative proceeding shall be given a reasonable time to prepare for the hearing, which may be extended by the agency upon good cause being shown.
4. As a result of the emergency adjudicative proceeding, in the absence of a specific statute requiring other administrative action, the administrative agency shall issue an order. The order must include a brief statement of the reasons justifying the determination of imminent peril to the public health, safety, or welfare and requiring an emergency adjudicative proceeding to prevent or avoid the imminent peril.
5. After issuing an order pursuant to this section, the administrative agency shall proceed as soon as possible to complete any other proceedings related to the emergency adjudicative proceeding that do not involve imminent peril to the public health, safety, or welfare.

28-32-33. Adjudicative proceedings - Subpoenas - Discovery - Protective orders.

1. In an adjudicative proceeding, discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure.
2. In any adjudicative proceeding, upon the request or motion of any party to the proceeding or upon the hearing officer's own motion on behalf of the agency, a hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or any other motion relating to subpoenas, discovery, or protective orders must be made to the hearing officer. The hearing officer's rulings on these motions may be appealed under section 28-32-42 after issuance of the final order by the agency. The cost of issuing and serving a subpoena in any adjudicative proceeding must be paid by the person or agency requesting it.
3. Any witness who is subpoenaed under the provisions of this section and who appears at a hearing or other part of an adjudicative proceeding, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court. Witness fees and mileage shall be paid by the party or agency at whose instance the witness appears. Any hearing officer may order the payment of witness fees or mileage by the appropriate party or agency.
4. Subpoenas, discovery orders, protective orders, and other orders issued under this section may be enforced by applying to any judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure of a witness or other person to comply with the order of the district court is contempt of court which is punishable by the district court, upon application. The judge may award attorney's fees to the prevailing party in an application under this subsection.

28-32-34. Administration of oaths - Parties to be advised of perjury provisions.

Any hearing officer in an administrative proceeding has the power to examine witnesses and records and to administer oaths to witnesses. At the time the person presiding administers the oath to a witness, the person shall advise the witness of the provisions of subsection 1 of section 12.1-11-01 and of the maximum penalty for perjury.

28-32-35. Procedure at hearing.

The person presiding at a hearing shall regulate the course of the hearing in conformity with this chapter and any rules adopted under this chapter by an administrative agency, any other applicable laws, and any prehearing order. To the extent necessary for full disclosure of all relevant facts and issues, the person presiding at the hearing shall afford to all parties and other persons allowed to participate the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted or conditioned by a grant of intervention or by a prehearing order. A hearing may be conducted in total or in part by making use of telephone, television, facsimile services, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if practicable, to see the entire proceeding while it is taking place, and if such use does not substantially prejudice or infringe on the rights and interests of any party.

28-32-36. Agency to make record.

An administrative agency shall make a record of all testimony, written statements, documents, exhibits, and other evidence presented at any adjudicative proceeding or other administrative proceeding heard by it. Oral testimony may be taken by a court reporter, by a stenographer, or by use of an electronic recording device. All evidence presented at any proceeding before the administrative agency shall be filed with the agency. A copy of the record of any proceeding before an administrative agency, or a part thereof, must be furnished to any party to the proceeding and to any other person allowed to participate in the proceeding, upon written request submitted to the agency and upon payment of a uniform charge to be set by the agency. Any fee paid to an administrative agency for the record, or a part thereof, shall be paid into the general fund and is appropriated as a refund to the agency for the purposes of defraying the costs of preparing the record. An agency may contract with any person or another agency to prepare a record, or a part thereof, of any proceeding before the agency.

28-32-37. Ex parte communications.

1. Except as provided in subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued,

except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.

5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 6.
6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

28-32-38. Separation of functions.

1. No person who has served as investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
2. No person who is subject to the direct authority of one who has served as an investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
3. Any other person may serve as hearing officer in an adjudicative proceeding, unless a party demonstrates grounds for disqualification.
4. Any person may serve as hearing officer at successive stages of the same adjudicative proceeding, unless a party demonstrates grounds for disqualification.

28-32-39. Adjudicative proceedings - Findings of fact, conclusions of law, and order of agency - Notice.

1. In an adjudicative proceeding an administrative agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law and the order of the agency based upon its findings and conclusions.
2. If the agency head, or another person authorized by the agency head or by law to issue a final order, is presiding, the order issued is the final order. The agency shall serve a copy of the final order and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.

3. If the agency head, or another person authorized by the agency head or by law to issue a final order, is not presiding, then the person presiding shall issue recommended findings of fact and conclusions of law and a recommended order within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible. The recommended findings of fact and conclusions of law and the recommended order become final unless specifically amended or rejected by the agency head. The agency head may adopt the recommended findings of fact and conclusions of law and the recommended order as final. The agency may allow petitions for review of a recommended order and may allow oral argument pending issuance of a final order. An administrative agency may adopt rules regarding the review of recommended orders and other procedures for issuance of a final order by the agency. If a recommended order is issued, the agency must serve a copy of any final order issued and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within sixty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.

28-32-40. Petition for reconsideration.

1. Any party before an administrative agency who is aggrieved by the final order of the agency, including the administrative agency when the hearing officer is not the agency head or one or more members of the agency head, within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review. If the agency's hearing officer issues the agency's final order, the petition for reconsideration must be addressed to the hearing officer, who may grant or deny the petition under subsection 4.
2. Any party, including workforce safety and insurance, that appears before workforce safety and insurance may file a petition for reconsideration within thirty days after notice has been given as required by section 28-32-39.
3. The party must submit with the petition for reconsideration a statement of the specific grounds upon which relief is requested or a statement of any further showing to be made in the proceeding. The petition must also state whether a rehearing is requested. The petition and any statement shall be considered a part of the record in the proceeding.
4. The administrative agency may deny the petition for reconsideration or may grant the petition on such terms as it may prescribe. If a rehearing is granted, the agency may allow a new hearing or limit the hearing as appropriate. The agency may dissolve or amend the final order and set the matter for further hearing. The petition is deemed to have been denied if the agency does not dispose of it within thirty days after the filing of the petition. Any rehearing must be presided over by the same person or persons presiding previously at the hearing, if available. Any amended findings, conclusions, and orders must be issued by the same person or persons who issued the previous recommended or final orders, if available. Within thirty days after the close of proceedings upon reconsideration, or as soon thereafter as possible, the agency shall issue and give notice of its order upon reconsideration as required in subsection 3 of section 28-32-39.
5. This section does not limit the right of any agency to reopen any proceeding or rehear any matter under any continuing jurisdiction which is granted to the agency by statute.

28-32-41. Effectiveness of orders.

Unless a later date is stated in the order, a final order of an administrative agency is effective immediately, but a party may not be required to comply with a final order unless it has been served upon the party and notice is deemed given pursuant to section 28-32-39 or the party has actual knowledge of the final order. A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order. This section does not preclude

an agency from taking emergency action to protect the public health, safety, or welfare as authorized by statute.

28-32-42. Appeal from determination of agency - Time to appeal - How appeal taken.

1. Any party to any proceeding heard by an administrative agency, except when the order of the administrative agency is declared final by any other statute, may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39. If a reconsideration has been requested as provided in section 28-32-40, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-39 and 28-32-40. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.
2. Any interested person who has participated in the rulemaking process of an administrative agency may appeal the agency's rulemaking action if the appeal is taken within ninety days after the date of publication in the North Dakota Administrative Code of the rule resulting from the agency rulemaking action.
3. a. The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing or a part thereof was held. If the administrative proceeding was disposed of informally, or for some other reason no hearing was held, an appeal may be taken to the district court of Burleigh County. Only final orders are appealable. A procedural order made by an administrative agency while a proceeding is pending before it is not a final order.
   b. The appeal of an agency's rulemaking action may be taken to the district court of Burleigh County.
4. An appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before the administrative agency, and by filing the notice of appeal and specifications of error together with proof of service of the notice of appeal, and the undertaking required by this section, with the clerk of the district court to which the appeal is taken. In an appeal of an agency's rulemaking action, only the administrative agency concerned, the attorney general, or an assistant attorney general, as well as the legislative council, need to be notified.
5. The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named as appellees. A notice of appeal of agency rulemaking actions need not name all persons participating in the rulemaking proceeding as appellees. The agency and all parties of record have the right to participate in the appeal. In the appeal of agency rulemaking action, any person who has participated in the rulemaking process has the right to participate in the appeal.
6. A bond or other undertaking for costs on appeal must be filed by the appellant as is required by appellants for costs on appeal in civil cases under the rules of appellate procedure. The bond or other undertaking must be filed with the clerk of the district court with the notice of appeal, must be made to the state of North Dakota, and may be enforced by the agency concerned for and on behalf of the state as obligee. A bond or other undertaking is not required when filing fees have been waived by a district court pursuant to section 27-01-07 or when the costs of preparation and filing of the record of administrative agency proceedings have been waived by a district court pursuant to subsection 3 of section 28-32-44.

28-32-43. Docketing of appeals.

Appeals taken in accordance with this chapter must be docketed as other cases pending in the district court are docketed and must be heard and determined by the court without a jury at such time as the court shall determine.

28-32-44. Agency to maintain and certify record on appeal.

1. An administrative agency shall maintain an official record of each adjudicative proceeding or other administrative proceeding heard by it.
2. Within thirty days, or a longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this chapter, and after payment by the appellant of the estimated cost of preparation and filing of the entire record of the proceedings before the agency, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties. Upon receiving a copy of the notice of appeal and specifications of error pursuant to subsection 4 of section 28-32-42 and unless the agency is appealing, the administrative agency shall notify the party appealing of the estimated costs of preparation and filing of the record. Thereafter, unless the agency is appealing, the party appealing shall pay the administrative agency the estimated costs required by this subsection. If the actual costs of preparation and filing of the entire record of the proceedings is greater than the estimated costs, the party appealing shall pay to the agency the difference. If the actual costs are less than the estimated costs, the agency shall pay to the party appealing the difference. Any payment for the costs of preparation and filing of the record must be paid into the insurance recovery fund and is appropriated as a refund to the agency for the purposes of defraying the costs of preparing and filing the record. An agency may contract with any person or another agency to prepare and file the record of any proceeding before the agency.
3. The cost of preparation and filing of the record may be waived by the district court upon application by an appellant, showing that the appellant is a low-income person unable to afford these costs. When a waiver is granted, the costs of preparation and filing of the record must be paid by the administrative agency.
4. The agency record of the proceedings, as applicable, may consist of only the following:
   a. The complaint, answer, and other initial pleadings or documents.
   b. Notices of all proceedings.
   c. Any prehearing notices, transcripts, documents, or orders.
   d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
   e. A statement of matters officially noticed.
   f. Offers of proof and objections and rulings thereon.
   g. Proposed findings, requested orders, and exceptions.
   h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
   i. Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on reconsideration.
   j. Any information considered pursuant to section 28-32-25.
   k. Matters placed on the record after an ex parte communication.
5. Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for administrative agency action and judicial review of an administrative agency action.
6. The record on review of agency rulemaking action, as applicable, may consist of only the following:
   a. All agency notices concerning proposed rulemaking.
   b. A copy of the proposed rule upon which written and oral submissions were made.
   c. A copy of the rule as submitted for publication.
   d. Any opinion letters by the attorney general as to a rule's legality or the legality of the agency's rulemaking action.

e. A copy of any interim rule and the agency's findings and statement of the reasons for an interim rule.
f. The regulatory analysis of a proposed rule.
g. The transcript of any oral hearing on a proposed rule.
h. All written submissions made to the agency on a proposed rule.
i. Any staff memoranda or data prepared for agency consideration in regard to the proposed rule.
j. Any other document that the agency believes is relevant to the appeal.
k. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.

7. If the notice of appeal specifies that no exception or objection is made to the agency's findings of fact, and that the appeal is concerned only with the agency's conclusions of law based on the facts found by it, the agency may submit an abstract of the record along with such portions of the record as the agency deems necessary, to be supplemented by those portions of the record requested to be submitted by the appellant or by the other party when the agency is appealing.
8. The court may permit amendments or additions to the record filed by the administrative agency in order to complete the record.

28-32-45. Consideration of additional or excluded evidence.

If an application for leave to offer additional testimony, written statements, documents, exhibits, or other evidence is made to the court in which an appeal from a determination of an administrative agency is pending, and it is shown to the satisfaction of the court that the additional evidence is relevant and material and that there were reasonable grounds for the failure to offer the evidence in the hearing or proceeding, or that the evidence is relevant and material to the issues involved and was rejected or excluded by the agency, the court may order that the additional evidence be taken, heard, and considered by the agency on terms and conditions as the court may deem proper. After considering the additional evidence, the administrative agency may amend or reject its findings of fact, conclusions of law, and order and shall file with the court a transcript of the additional evidence with its new or amended findings of fact, conclusions of law, and order, if any, which constitute a part of the record with the court.

28-32-46. Scope of and procedure on appeal from determination of administrative agency.

A judge of the district court must review an appeal from the determination of an administrative agency based only on the record filed with the court. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court must affirm the order of the agency unless it finds that any of the following are present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

If the order of the agency is not affirmed by the court, it must be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the order of the court.

28-32-47. Scope of and procedure on appeal from agency rulemaking.

A judge of the district court shall review an appeal from an administrative agency's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:

1. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
2. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
3. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's authority to adopt.
4. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

If the rulemaking action of the agency is not affirmed by the court, it must be remanded to the agency for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency must be declared invalid for reasons stated by the court.

28-32-48. Appeal - Stay of proceedings.

An appeal from an order or the rulemaking action of an administrative agency does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order as may be required by another statute.

28-32-49. Review in supreme court.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency, the agency may not be required to pay a docket fee or file a bond for costs or equivalent security.

28-32-50. Actions against administrative agencies - Attorney's fees and costs.

1. In any civil judicial proceeding involving as adverse parties an administrative agency and a party not an administrative agency or an agent of an administrative agency, the court must award the party not an administrative agency reasonable attorney's fees and costs if the court finds in favor of that party and, in the case of a final agency order, determines that the administrative agency acted without substantial justification.
2. This section applies to an administrative or civil judicial proceeding brought by a party not an administrative agency against an administrative agency for judicial review of a final agency order, or for judicial review pursuant to this chapter of the legality of agency rulemaking action or a rule adopted by an agency as a result of the rulemaking action being appealed.
3. Any attorney's fees and costs awarded pursuant to this section must be paid from funds available to the administrative agency the final order, rulemaking action, or rule of which was reviewed by the court. The court may withhold all or part of the attorney's fees from any award if the court finds the administrative agency's action, in the case of a final agency order, was substantially justified or that special circumstances exist which make the award of all or a portion of the attorney's fees unjust.

4. This section does not alter the rights of a party to collect any fees under other applicable law.
5. In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapter 23-20.3, 23-25, 23-29, or 61-28 in which two or more of the adverse parties are not an administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

28-32-51. Witnesses - Immunity.

If any person objects to testifying or producing evidence, documentary or otherwise, at any proceeding before an administrative agency, claiming a privilege against self-incrimination, but is directed to testify or produce evidence pursuant to the written approval of the attorney general, that person must comply with the direction but no testimony or evidence compelled from that person, after a valid claim of privilege against self-incrimination has been made, may be used against that person in any criminal proceeding subjecting that person to a penalty or forfeiture. No person testifying at any proceeding before an administrative agency may be exempted from prosecution and punishment for perjury or giving a false statement, or for contempt committed in answering, or failing to answer, or in producing, or in failing to produce, evidence pursuant to direction given under this section.

28-32-52. Elected official authority.

This chapter does not prohibit an elected official from presiding at that agency's cases, nor from deciding cases within that agency's jurisdiction.

TITLE 23
HEALTH AND SAFETY

CHAPTER 23-01
STATE DEPARTMENT OF HEALTH

23-01-01. State department of health - Officers.

The state department of health consists of a health council, a state health officer, section chiefs, directors of divisions, and other employees of the department.

23-01-01.1. State department of health to replace state department of health and consolidated laboratories.

Wherever the terms "North Dakota state department of health", "department of health", "health department", "state department of health and consolidated laboratories", "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health" must be substituted therefor.

Wherever the terms "state food commissioner and chemist" and "commissioner" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18, the term "state department of health" must be substituted therefor.

23-01-01.2. State department of health designated primary state environmental agency.

The state department of health is the primary state environmental agency.

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings.

The health council consists of eleven members appointed by the governor in the following manner: four persons from the health care field, five persons representing consumer interests, one person from the energy industry, and one from the manufacturing and processing industry. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive sixty-two dollars and fifty cents as compensation per day and their necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

23-01-02.1. Hospital utilization committees - Internal quality assurance review committees - Reports - Immunity.

Repealed by S.L. 1997, ch. 234, § 5.

23-01-03. Powers and duties of the health council.

The health council shall:

1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings of the council.

2. Make rules and regulations for the government of the council and its officers and meetings.
3. Establish standards, rules, and regulations which are found necessary for the maintenance of public health, including sanitation and disease control.
4. Provide for the development, establishment, and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, such standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records. No rule may be adopted with respect to building construction of existing medical hospitals or related medical institutions unless the rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.
5. Hold hearings on all matters brought before it by applicants and licensees of medical hospitals with reference to the denial, suspension, or revocation of licenses and make appropriate determination as specified herein.

The council may direct the state health officer to do or cause to be done any or all of the things which may be required in the proper performance of the various duties placed upon the state department of health.

23-01-03.1. Newborn metabolic and genetic disease screening tests.

The health council may authorize the use of newborn metabolic and genetic disease screening tests, as provided for in chapter 25-17, for research purposes. The council shall adopt rules to ensure that the results are used for legitimate research purposes and to ensure that the confidentiality of the newborns and their families is protected.

23-01-03.2. Duties of the health council.

The health council shall:

1. Monitor overall health care costs and quality of health care in the state.
2. Recommend to the appropriate interim legislative committees changes to the health care system in the state.
3. Publish an annual report on health care in the state.

23-01-03.3. Long-term care nursing scholarship and loan repayment grant program.

1. The state health council, in cooperation with the North Dakota long term care association, shall administer the long-term care nursing scholarship and loan repayment grant program. The purpose of the program is to provide matching funds to nursing facilities for the facilities to use in recruiting and retaining nurses by providing scholarships to nursing facility staff and other individuals to obtain a nursing education and by assisting in the repayment of student loans for licensed nurses employed in a nursing facility. The state health council shall adopt rules necessary to administer the program, including rules establishing criteria regarding eligibility for and distribution of program grants.
2. An applicant for a program grant shall establish that the applicant:
   a. Is a licensed nursing facility;
   b. Has available matching funds equal to the amount of the grant request; and
   c. Meets the eligibility criteria established by rule.
3. An eligible applicant may receive a program grant not exceeding five thousand five hundred dollars in the first year of the biennium. Any funds appropriated by the legislative assembly for the grant program which are remaining after the first year of the biennium may be distributed to eligible applicants in the second year of the biennium in any amount determined by the state health council.

23-01-04. Effect of rules and regulations.

All rules and regulations promulgated by the health council under the powers granted by any provisions of this title are binding upon all county and municipal health officers, and upon all county, municipal, and private medical hospitals and upon related institutions, and have the force and effect of law.

23-01-04.1. Rulemaking authority and procedure.

1. Except as provided in subsection 2, no rule which the state department of health, hereinafter the department, adopts for the purpose of the state administering a program under the federal Clean Air Act, federal Clean Water Act, federal Safe Drinking Water Act, federal Resource Conservation and Recovery Act, federal Comprehensive Environmental Response, Compensation and Liability Act, federal Emergency Planning and Community Right to Know Act of 1986, federal Toxic Substances Control Act, or federal Atomic Energy Act of 1954, may be more stringent than corresponding federal regulations which address the same circumstances. In adopting such rules, the department may incorporate by reference corresponding federal regulations.
2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1, only if it makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this section within nine months of the filing of the petition.
4. All existing rules of the department remain in full force and effect after July 10, 1989, pending department review and revision under subsection 3.
5. Any person who is issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent that the department's rule violates this section by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this section.
6. The provisions of this section may not be construed so as to require the department to review and propose revisions to any existing rule regarding the collection of fees by the department in connection with the administration of any program identified in subsection 1.

23-01-04.2. Legislative intent - Health vaccination charges.

It is the intent of the legislative assembly that the state department of health adopt rules defining appropriate administration charges for vaccine provided by the department to physicians, private clinics, and hospitals.

23-01-04.3. Alternative health care services pilot project - Application - Notice - Hearing - Approval - Duration.

1. At any time that the health care needs of a city, township, or other geographic area are not being adequately met, any person may apply to the state health council for approval to conduct an alternative health care services pilot project. The application must address the need for and benefits of the pilot project. It must also contain a

detailed description of the nature and scope of the project, quality control, organization, accountability, responsibility, and financial feasibility.

2. Upon receipt of an application under subsection 1, the state health council shall schedule a public hearing, send notice to all interested parties, and give public notice of the hearing by publication in the official newspaper of each county in the pilot project area. At the hearing, the council shall accept written and oral testimony. The council shall review the application and all testimony presented at the hearing and approve, disapprove, or modify and approve the application based on criteria established by the council. The criteria must address the availability and use of health personnel, facilities, and services.
3. Notwithstanding any other provisions of law, upon approval of an application submitted under subsection 1, the state health council, in consultation with the state health officer and any other public or private entity consulted by the state health council, shall set the standards for the delivery of health care services by the pilot project. The standards may not adversely affect the state's participation in federal medicare and medicaid programs. No more than three separate projects may be operational at any time and no project may be operational for longer than five years.

23-01-05. Health officer - Qualifications, salary, term, duties - Advisory committee.

The governor shall appoint the state health officer who must have had substantive private or public administrative experience and demonstrated experience in the management of people. The state health officer is entitled to receive a salary commensurate with that person's training and experience. The governor shall set the salary of the state health officer within the limits of legislative appropriations to the department. The state health officer is entitled to receive all necessary traveling expenses incurred in the performance of official business. The state health officer may not engage in any other occupation or business that may conflict with the statutory duties of the state health officer and holds office for a term of four years beginning January 1, 1993. The state health officer is the administrative officer of the state department of health. If the governor does not appoint as state health officer a physician licensed in this state, the governor shall appoint at least three licensed physicians recommended by the state medical association to serve as an advisory committee to the state health officer. Each member of the advisory committee is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state officers. The term of the advisory committee coincides with the term of the state health officer. A committee member serves at the pleasure of the governor. The duties of the state health officer are as follows:

1. Enforce all rules and regulations as promulgated by the health council.
2. Hold public health unit boards of health responsible for enforcement of state rules, serve in an advisory capacity to public health unit boards of health, and provide for coordination of health activities.
3. Establish and enforce minimum standards of performance of the work of the local department of health.
4. Study health problems and plan for their solution as may be necessary.
5. Collect, tabulate, and publish vital statistics for each important political or health administrative unit of the state and for the state as a whole.
6. Promote the development of local health services and recommend the allocation of health funds to local jurisdictions subject to the approval of the health council.
7. Collect and distribute health education material.
8. Maintain a central public health laboratory and where necessary, branch laboratories for the standard function of diagnostic, sanitary and chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.
9. Establish a service for medical hospitals and related institutions to include licensing of such institutions according to the standards promulgated by the health council and consultation service to communities planning the construction of new hospitals and related institutions.
10. Comply with the state merit system policies of personnel administration.

11. Establish a program to provide information to the surviving family of a child whose cause of death is suspected to have been the sudden infant death syndrome.
12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
13. Make bacteriological examination of bodily secretions and excretions and of waters and foods.
14. Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.
15. Make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.
16. Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
17. From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.
18. Establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. No charge may be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.
19. a. Establish a review process for instances in which the department is requested to conduct an epidemiological assessment of a commercial building. The epidemiological assessment must include:
    (1) A statement of whether there are known environmental causes;
    (2) If there are known environmental causes identified, a recommendation of how they can be remediated or mitigated; and
    (3) If there are no known environmental causes identified, a statement that no known causes exist.
    b. Costs for remediation, mitigation, and consultant services are the responsibility of the building owner. Proof of remediation of any identified environmental concern related to the epidemiological assessment is the burden of the building owner.

23-01-05.1. Organ or tissue transplant assistance administration - Standing appropriation.

The state health officer shall select a private nonprofit patient-oriented organization incorporated in this state for the purpose of administering financial assistance to organ or tissue transplant patients who are residents of this state. The state health officer shall adopt rules governing administration of this section. The organization selected shall administer and provide grants from available funds to alleviate demonstrated financial needs of transplant patients for any costs associated with transplant operations, under guidelines based on current social service eligibility requirements. There is hereby created as a special fund in the state treasury an organ transplant support fund, the principal and income of which is hereby appropriated to the organization selected under this section. The organization administering the fund may solicit contributions from private or governmental sources and such contributions may be deposited in the fund.

23-01-05.2. Administration of epinephrine - Liability.

1. The state health officer shall adopt rules to authorize a layperson to administer epinephrine to an individual who has a severe allergic reaction.

2. An individual authorized to administer epinephrine by the state health officer may obtain premeasured doses of epinephrine and the necessary paraphernalia for epinephrine administration from any licensed physician or pharmacist.
3. An individual authorized to administer epinephrine by the state health officer, and the employer of such an individual, is not civilly or criminally liable for any act or omission of that individual when acting in good faith while rendering emergency treatment to an individual who has a severe adverse reaction, except when the conduct amounts to gross negligence.

23-01-05.3. Immunization data.

1. The state department of health may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The state department of health may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
2. If a health care provider fails to submit an immunization report required under this section within four weeks of vaccination:
   a. That health care provider may not order or receive any vaccine from the North Dakota immunization program until that provider submits all reports required under this section.
   b. The state department of health shall make a report to that health care provider's occupational licensing entity outlining that provider's failure to comply with the reporting requirements under this section.
3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.

23-01-05.4. Department to employ state forensic examiner - Qualifications - Duties.

The state department of health may employ and establish the qualifications and compensation of the state forensic examiner. The state forensic examiner must be a physician who is board-certified or board-eligible in forensic pathology, who is licensed to practice in this state, and who is in good standing in the profession. The state forensic examiner shall:

1. Exercise all authority conferred upon the coroner under chapter 11-19.1 and any other law;
2. Consult with local coroners on the performance of their duties as coroners;
3. Conduct investigations into the cause of death of and perform autopsies on any deceased human body whenever requested to do so by the acting local county coroner or the local state's attorney;
4. Provide training and educational materials to local county coroners, law enforcement, and any other person the state forensic examiner deems necessary;
5. Maintain complete records of the cause, manner, and mode of death necessary for accurate health statistics and for public health purposes; and
6. Perform other duties assigned by the state health officer.

23-01-05.5. Autopsy reports - Confidential - Exceptions.

1. As used in this section:

a. "Autopsy report" means the report of the forensic examiner or the examiner's designee on the post-mortem examination of a deceased individual to determine the cause and manner of death, including any written analysis, diagram, photograph, or toxicological test results.
b. "Report of death" means the official findings on the cause of death and manner of death issued by the state forensic examiner, the examiner's designee, county coroner, or pathologist performing an autopsy ordered by a county coroner or by the state forensic examiner and which is the face page of the autopsy report identifying the decedent and stating the cause of death and manner of death.

2. An autopsy report and any working papers and notes relating to an autopsy report are confidential and may be disclosed only as permitted by this section. The report of death is a public record subject to disclosure under section 44-04-18.
3. Subject to the limitations on the disclosure of an autopsy photograph or other visual image or video or audio recording of an autopsy required under section 44-04-18.18, any working papers and notes relating to a final autopsy report may be disclosed pursuant to a court order and as otherwise expressly provided by law.
4. The state forensic examiner or the examiner's designee shall disclose a copy of the autopsy report:
   a. To any county coroner, including a coroner in any state or Canadian province, with jurisdiction over the death, and the coroner may use or disclose these records for purposes of an investigation, inquest, or prosecution.
   b. To any state's attorney or criminal justice agency, including a prosecutor or criminal justice agency of the United States, any state, or any Canadian province, with jurisdiction over an investigation of the death and the state's attorney or criminal justice agency may use or disclose these records for the purposes of an investigation or prosecution.
   c. To workforce safety and insurance if the death is related to the decedent's work, and to any other workers' compensation or other similar program, established by law, that provides benefits for work-related injuries or illness without regard to fault if there is no criminal investigation.
   d. To the child fatality review panel if there is no active criminal investigation.
   e. In accordance with a court order.
5. The state forensic examiner or the examiner's designee upon request shall disclose a copy of the autopsy report to:
   a. The decedent's personal representative and to the decedent's spouse, child, or parent, upon proof of the relationship, if there is no active criminal investigation.
   b. A physician or hospital who treated the deceased immediately prior to death if there is no active criminal investigation.
   c. An insurance company upon proof that the decedent's life was covered by a policy issued by the company if there is no active criminal investigation.
   d. The food and drug administration, the national transportation safety board, the occupational health and safety administration, and any other federal or state agency with authority to obtain an autopsy report to investigate a death resulting from the decedent's type of injury or illness.
   e. A professional or research organization collecting data to initiate or advance death investigation standards, after the identifiers necessary to create a limited data set under title 45, Code of Federal Regulations, part 164, section 514, subsection e have been removed from the report.
6. The forensic examiner, the examiner's designee, any county coroner or county medical coroner, and any public employee who, in good faith, discloses autopsy findings, an autopsy report, or other information relating to an autopsy report or cause of death to a person who the public official or employee reasonably believes is entitled to that information under this section is immune from any liability, civil or criminal, for making that disclosure. For the purposes of any proceeding, the good faith of any public employee who makes a disclosure under this section is presumed.

23-01-06. Biennial report - Contents.

The state health officer shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must cover the following subjects:

1. The activities of the various divisions, the work accomplished during the two years covered by the report, and an analysis of the program of each of the divisions.
2. The expenditures of the state department of health.
3. The expenditures in each county board of health or the district board of health.
4. Any reports relating to the hospital program as required by the health council.

23-01-07. Structure of department.

Repealed by S.L. 1993, ch. 218, § 10.

23-01-08. Directors of divisions - Deputy - Appointment, salary, duties.

The state health officer shall appoint directors of the various divisions of the department and shall determine the salary, within the limits of legislative appropriations to the department and in conformity with the state merit system, to be received by such persons. The duties of such director must be those prescribed by the state health officer. The state health officer may appoint a deputy state health officer. A deputy state health officer who does not hold a health-related degree may not individually issue an order regarding public health unless the order is cosigned by a physician who is employed by the department or cosigned by the state epidemiologist. The deputy state health officer serves at the pleasure of the state health officer.

23-01-09. Duties of director of consolidated laboratories branch.

Repealed by S.L. 1993, ch. 218, § 10.

23-01-09.1. Duties of state toxicologist.

Repealed by S.L. 2003, ch. 469, § 13.

23-01-10. Office space.

The state shall provide suitable office space in Bismarck for housing and maintaining the state department of health. Special fireproof vaults must be provided for the storage of birth and death certificates.

23-01-11. Acceptance of funds and right to qualify for benefits under federal laws authorized.

The state department of health may:

1. Accept funds from cities, counties, the federal government, private organizations, and individuals for infancy and maternal hygiene, for other public health work and for the purpose of conducting a survey of existing medical hospitals and related institutions, planning of needed hospital construction and for construction and maintenance of such medical hospitals and related institutions. When approved by the governor of this state, the state department of health may match the same from any unexpended portion of its appropriation in accordance with specifications agreed to or required by congressional act. All infancy and maternal hygiene and public health work must be done under the supervision of the state department of health.
2. Adopt rules necessary to enable the state to be in compliance with any federal laws in order to qualify for any federal funds related to medical facilities or agencies licensed by the state department of health.

23-01-12. Hospital records to be kept at direction of state health officer.

When any person is admitted into a lying-in hospital or other institution, public or private, to which persons resort for the treatment of disease or for confinement, or to which persons are committed by process of law, the superintendent, manager, or other person in charge of such institution shall make a record of all the personal and statistical particulars relative to such

person. The record must be in such form as is directed by the state health officer. In the case of any person admitted or committed for medical treatment of disease, the physician in charge shall specify for entry in the records the nature of the disease and where, in the physician's opinion, it was contracted. The personal particulars and information required for compliance with the provisions of this section must be obtained from the individual personally if practicable, and when the information cannot be obtained from the individual, from the individual's relatives or friends or from any other person acquainted with the facts.

23-01-13. Blood plasma - Obtaining, storing, and distributing.

Repealed by S.L. 1991, ch. 263, § 1.

23-01-14. State department of health authorized to transfer future accumulated fees.

As a continuing policy, the state department of health may automatically from time to time transfer unclaimed fees on deposit with the Bank of North Dakota or other authorized depository to the state general fund when the unclaimed status has existed for a period of at least three years.

23-01-15. Research studies confidential - Penalty.

1. All information, records of interviews, written reports, statements, notes, memoranda, or other data procured by the state department of health, in connection with studies conducted by the state department of health, or carried on by the department jointly with other persons, agencies, or organizations, or procured by such other persons, agencies, or organizations, for the purpose of reducing the morbidity or mortality from any cause or condition of health is confidential and must be used solely for the purposes of medical or scientific research.
2. Such information, records, reports, statements, notes, memoranda, or other data is not admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person. Such information, records, reports, statements, notes, memoranda, or other data may not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the state department of health, nor by any other person, except as may be necessary for the purpose of furthering the research project to which they relate. No person participating in such research project may disclose, in any manner, the information so obtained except in strict conformity with such research project. No officer or employee of said department may interview any patient named in any such report, nor a relative of any such patient, unless the consent of the attending physician and surgeon is first obtained.
3. The furnishing of such information to the state department of health or its authorized representative, or to any other cooperating agency in such research project, does not subject any person, hospital, sanitarium, rest home, nursing home, or other person or agency furnishing such information, to any action for damages or other relief.

23-01-16. Dairy products - Joint standards.

The state department of health and the dairy department of the department of agriculture shall jointly adopt a set of uniform standards in relation to all matters falling within their joint jurisdiction regarding dairy products. The state department of health, district health units, municipal health departments or units, and the dairy department shall each be permitted to accept any inspection report of the other department or unit regarding the inspection of dairy products and the producers and processors of such products, when such report is based substantially upon standards conforming with the milk ordinance and code recommended by the United States public health service.

23-01-17. Noise harmful to health and safety - Power to regulate - Hearings - Appeal - Penalty - Injunction.

Repealed by S.L. 1991, ch. 264, § 1.

23-01-18. State department of health responsible for control of rabies.
Repealed by S.L. 1999, ch. 243, § 2.

23-01-19. Extermination of rabies.
Repealed by S.L. 1999, ch. 243, § 2.

23-01-20. Traumatic head injury defined.
Repealed by S.L. 1999, ch. 231, § 1.

23-01-21. Central registry of traumatic head injury - Establishment - Reports.
Repealed by S.L. 1999, ch. 231, § 1.

23-01-22. Department to employ waste management facility inspectors.
The state department of health shall employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each commercial, nonpublicly owned waste management disposal or incineration facility that accepts more than twenty-five thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. This section does not apply to any energy conversion facility or coal mining operation that disposes of its solid waste onsite. The department may require inspectors for those facilities that accept less than twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct regular inspections of the operating procedure and conditions of the facility and report the findings to the department on a regular basis. If an inspector discovers a condition at a facility that is likely to cause imminent harm to the health and safety of the public or environment, the inspector shall notify the department. The department shall proceed as provided by sections 23-29-10 and 23-29-11.

The department shall assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses associated with employing an inspector for the facility. The owner or operator of the facility shall submit the fee to the department by July first of each year. Any fees collected must be deposited in the department's operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. If a facility begins operation after July first of any year, the owner or operator of the facility shall pay to the department a prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the waste management facility account may be spent by the department within the limits of legislative appropriation.

23-01-23. Permit or investigatory hearings - Exemption from chapters 28-32 and 54-57.
A permit hearing conducted for purposes of receiving public comment or an investigatory hearing conducted under chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, and 61-28.1 is not an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of chapter 54-57.

23-01-24. Health care cost and quality review program - Penalty.
The department of health shall conduct a continuous program to review and improve the quality of health care in the state. The department may contract with a qualified person or organization to develop and implement the program. The department shall use the program to compile relevant information about the quality of health care in this state which will allow the department to evaluate the cost, quality, and outcomes of health care. The department shall establish and consult a provider advisory committee composed of health care providers regarding the data that is a cost-effective process for collecting and evaluating the information. The state health officer may assess against a provider a penalty of one hundred dollars per day for each day the provider willfully refuses to provide the department with information requested for use with the program, but the penalty may not exceed one thousand dollars for each request. A provider against whom a fee is assessed may appeal that assessment to the state

health council. If the provider fails to pay the penalty, the health council may, in the county where the provider's principal place of business is located, initiate a civil action against the provider to collect the penalty. As used in this section, "provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or professional practice. The department shall ensure that patient privacy is protected throughout the compilation and use of the information. The department shall evaluate data management capabilities in the state and shall organize its capabilities to provide information about the cost of care on an individual provider basis as well as a collective basis.

23-01-25. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13.1, 19-18, or 19-20.1 must be performed by the state department of health for the agriculture commissioner at no charge.

23-01-26. State department of health - Indirect cost recoveries.

Notwithstanding section 54-44.1-15, the state department of health may deposit indirect cost recoveries in its operating account.

23-01-27. Donated dental services program.

The state department of health shall contract with the North Dakota dental association, or other appropriate and qualified organizations, to develop and administer a donated dental services program through which volunteer dentists provide comprehensive dental care for needy, disabled, aged, or medically compromised individuals. The volunteers will treat individuals through the program and, with the exception of certain dental laboratory costs, will fully donate their services and supplies. The contract must specify the responsibilities of the administering organization and include:

1. Establishment of a network of volunteer dentists, including dental specialists, volunteer dental laboratories, and other appropriate volunteer professionals to donate dental services to eligible individuals;
2. Establishment of a system to refer eligible individuals to appropriate volunteers;
3. Development and implementation of a public awareness campaign to educate eligible individuals about the availability of the program;
4. Provision of appropriate administrative and technical support to the program; and
5. Submission of an annual report to the state department of health that:
    a. Accounts for all program funds;
    b. Reports the number of individuals served by the program and the number of dentists and dental laboratories participating as providers in the program;
    c. Includes any other information required by the state department of health; and
    d. Performs, as required by the state department of health, any other duty relating to the program.

23-01-28. Combined purchasing with local public health units - Continuing appropriation.

The state department of health may make combined or joint purchases with or on behalf of local public health units for items or services. Payments received by the state department of health from local public health units pursuant to a combined or joint purchase must be deposited in the operating fund and are appropriated as a standing and continuing appropriation to the state department of health for the purpose of this section.

23-01-29. Bone marrow donor education.

The state department of health shall provide information and educational materials to the public regarding bone marrow donation through the national marrow donor program. The department shall seek assistance from the national marrow donor program to establish a

system to distribute materials, ensure that the materials are updated periodically, and address the education and recruitment of minority populations.

23-01-30. Zoning regulation of concentrated animal feeding operations - Central repository.

The state department of health shall establish, operate, and maintain an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated animal feeding operations. The county auditor of a county and the township clerk of a township having a zoning regulation that pertains to concentrated animal feeding operations shall file the regulation with the state department of health for inclusion in the central repository.

23-01-31. North Dakota health information technology steering committee.

Repealed by S.L. 2009, ch. 519, § 6.

23-01-32. Viral hepatitis program - Vaccination - Study.

1. The state department of health shall establish and administer a viral hepatitis program with the goal of distributing to residents of the state who are at an increased risk for exposure to viral hepatitis information that addresses the higher incidence of hepatitis C exposure and infection among these populations, addresses the dangers presented by the disease, and provides contacts for additional information and referrals.
2. The department shall establish a list of classes of individuals by category that are at increased risk for viral hepatitis exposure. The list must be consistent with recommendations developed by the federal centers for disease control and prevention. The department shall determine the type of information the department will distribute under the program and the form and manner of distribution.
3. The department shall establish a vaccination and testing program, to be coordinated by the department through local public health units.

23-01-33. Human papilloma virus - Information.

The state department of health shall educate the public about the human papilloma virus and the availability of a human papilloma virus vaccine; promote immunization against the human papilloma virus; and distribute informational material regarding the human papilloma virus and the human papilloma virus vaccine. The department shall distribute the informational material through relevant department programs and divisions, including breast and cervical cancer control programs; immunization programs; family planning programs; and human immunodeficiency virus and sexually transmitted disease programs. Informational materials distributed must include the recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention; contain information relevant to the target populations of each of the participating programs and divisions distributing the informational material; and contain information regarding the availability of the vaccine through the vaccines for children program operated by the department under 42 U.S.C. 1396s, and the medical assistance program.

23-01-34. Children with special health care needs - Program administration.

The state department of health shall administer programs for children with special health care needs as may be necessary to conform to title 5, part 2, of the federal Social Security Act, as amended through July 1, 2007 [Pub. L. 74-271; 49 Stat. 620; 42 U.S.C. 701 et seq.], including providing services and assistance to children with special health care needs and their families and developing and operating clinics for the identification, screening, referral, and treatment of children with special health care needs.

23-01-35. Tattooing, body piercing, branding, subdermal implants, or scarification - Permit - Fee - Adoption of rules - Exemptions - Injury reports.

1. A person may not operate a facility providing tattooing, body piercing, branding, subdermal implant, or scarification services without a permit issued by the department under this section. The holder of a permit shall display the permit in a conspicuous place at the facility for which the permit is issued. A permit issued under this section expires annually. An applicant for a permit shall submit an application for a permit to the department, on a form provided by the department, with a permit fee established by the department. The application must include the name and complete mailing address and street address of the facility and any other information reasonably required by the department for the administration of this section.
2. The health council shall adopt rules to regulate any person that receives compensation for engaging in the practice of tattooing, body piercing, branding, subdermal implants, or scarification. The rules must establish health and safety requirements and limitations with respect to the age of an individual who may receive a tattoo, body piercing, or scarification and may prohibit any practice that the health council deems unsafe or a threat to public health.
3. A facility is exempt from subsection 1 if the facility provides body piercing that is limited to the piercing of the noncartilaginous perimeter or lobe of the ear and the facility does not provide tattooing, branding, scarification, or subdermal implants. A person is exempt from regulation under subsection 2 if the person's practice under this section is limited to piercing of the noncartilaginous perimeter or lobe of the ear. A licensed health care professional acting within that professional's scope of practice and the associated medical facility are exempt from this section.
4. If a customer of a facility regulated under this section reports to the facility an injury the customer or operator of the facility believes to have resulted from the tattooing, body piercing, branding, subdermal implanting, or scarification provided at the facility, the operator of the facility shall provide the customer with written information on how to report the alleged injury to the state department of health. If a licensed health care professional treats a patient for an injury the professional determines, in the exercise of professional judgment, occurred as a result of a service regulated under this section, the professional shall report the circumstances to the state department of health. A licensed health care professional is immune from liability for making or not making a report under this subsection.
5. The fees established by the department must be based on the cost of conducting routine and complaint inspections and enforcement actions and preparing and sending license renewals. Fees collected under this section must be deposited in the department's operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly. The department shall waive all or a portion of the fee for any facility that is subject to local jurisdiction.

23-01-36. Appeal from permit proceedings.

An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or

permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

23-01-37. Survey program - Health facilities construction or renovation projects.

1. The state department of health shall conduct a life safety survey process for all health facilities licensed by the division of health facilities of the state department of health during and at the conclusion of a construction, renovation, or construction and renovation project.
2. The department may charge a reasonable fee for the review of plans for construction, renovation, or construction and renovation projects performed under this section based on the size of the project. Revenues derived from the fees collected under this subsection must be deposited in the department's operating fund in the state treasury.
3. The department shall design and operate the program in a manner that will provide that the surveyor that performs a life safety survey under this section does not violate the federal requirements associated with medicare-certified life safety surveys.

23-01-38. Electronic drug prior authorization and transmission - Limitations.

1. Effective August 1, 2013, a drug prior authorization request must be accessible to a health care provider with the provider's electronic prescribing software system and must be accepted electronically, through a secure electronic transmission, by the payer, by the insurance company, or by the pharmacy benefit manager responsible for implementing or adjudicating or for implementing and adjudicating the authorization or denial of the prior authorization request. For purposes of this section, a facsimile is not an electronic transmission.
2. Effective August 1, 2013, electronic transmission devices used to communicate a prescription to a pharmacist may not use any means or permit any other person to use any means, including advertising, commercial messaging, and popup advertisements, to influence or attempt to influence through economic incentives the prescribing decision of a prescribing practitioner at the point of care. Such means may not be triggered by or be in specific response to the input, selection, or act of a prescribing practitioner or the prescribing practitioner's staff in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy. Any electronic communication sent to the prescriber, including advertising, commercial messaging, or popup advertisements must be consistent with the product label, supported by scientific evidence, and meet the federal food and drug administration requirements for advertising pharmaceutical products.
3. Electronic prescribing software may show information regarding a payer's formulary if the software is not designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

23-01-39. Immunization program - Provider choice - Purchasing.

1. As used in this section:
   a. "Department" means the state department of health.
   b. "North Dakota immunization advisory committee" means the group of private health care providers, local public health units, department staff, and other applicable individuals which makes immunization and vaccine selection recommendations to the North Dakota immunization program.
   c. "North Dakota immunization program" means the program administered by the department to provide vaccinations to North Dakota children consistent with state and federal law.
   d. "Program-eligible child" means any child, who is under nineteen years of age, whose custodial parent or legal guardian resides in this state.
   e. "Vaccine" means any vaccine recommended by the federal advisory committee on immunization practices of the centers for disease control and prevention.

f. "Vaccines for children program" is a federally funded program that provides vaccines at no cost to eligible children pursuant to section 1928 of the Social Security Act [42 U.S.C. 1396s].

2. As part of the North Dakota immunization program:
   a. The department shall implement a provider choice system as part of the state's implementation of the vaccines for children program. This provider choice system must provide a health care provider participating in the state's vaccines for children program or in any other immunization program for children, adolescents, or adults which is administered through the state using federal or state funds, may select any licensed vaccine, including combination vaccines, and any dosage forms that have in effect a recommendation from the federal advisory committee on immunization practices. This subsection does not apply in the event of a disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.
   b. The department shall establish a program through which the department purchases vaccines through the federal vaccine purchasing contract.
      (1) The department shall supply public health units with the purchased vaccines. A public health unit that receives vaccines under this subdivision shall administer the vaccines to program-eligible children.
      (2) A public health unit that receives vaccines under this purchasing program may not bill an insurer for the cost of the vaccine but may charge an administration fee.
      (3) The department shall fund this purchasing program through participation in the vaccines for children program, the federal section 317 vaccine program, and state funds appropriated for this purpose. If it appears there will be inadequate funds to fund this purchasing program, the department shall petition the emergency commission for a transfer from the state contingency fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, to fund this purchasing program.

ARTICLE 33-15

AIR POLLUTION CONTROL

Chapter	
33-15-01	General Provisions
33-15-02	Ambient Air Quality Standards
33-15-03	Restriction of Emission of Visible Air Contaminants
33-15-04	Open Burning Restrictions
33-15-05	Emissions of Particulate Matter Restricted
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33-15-07	Control of Organic Compounds Emissions
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CHAPTER 33-15-01
GENERAL PROVISIONS

Section	
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33-15-01-01. 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.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-01.1

33-15-01-02. Scope. These air quality standards and emission regulations apply to any source or emission existing partially or wholly within North Dakota.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-03. Authority. The North Dakota state department of health has been authorized to provide and administer this article under the provisions of North Dakota Century Code chapter 23-25.

History: Amended effective September 1, 1997.
General Authority: NDCC 23-25-02
Law Implemented: NDCC 23-25-02

33-15-01-04. 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 23-25.

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 North Dakota state department of health.

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 33-24-02.

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 23-20.3, 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, but not limited to, 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, molluscacides, 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. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

34. "PM_{10} 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 33-10.

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 [1144 degrees Kelvin to 1255 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 23-20.3 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 2, 2010, 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: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-05. 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_2O	-	water
H_2S	-	hydrogen sulfide
H_2SO_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 $\leq$ 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: Amended effective January 1, 1989; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-06. Entry onto premises - Authority. Entry onto premises and onsite inspection shall be made pursuant to North Dakota Century Code section 23-25-05.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-05

33-15-01-07. Variances.

1. Where upon written application of the responsible person or persons the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship, 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 for prevention, control, or abatement of air pollution in harmony with the intent of the state and any applicable federal laws.

2. No variance may permit or authorize the creation or continuation of a public nuisance, or a danger to public health or safety.

History: Amended effective June 1, 1990.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-08. Circumvention. No person shall cause or permit the installation or use of any device or any means which conceals or dilutes an emission of air contaminant which would otherwise violate this article.

History: Amended effective June 1, 1990.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-09. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of this article which can

be given effect without the invalid provision or application, and to this end the provisions of this article and the various applications thereof are declared to be severable.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-10. Land use plans and zoning regulations.

1. **Planning agency land use plans.**

   a. The department will provide to planning agencies, for use in preparing land use plans, information concerning:

      (1) Air quality.

      (2) Air pollutant emissions.

      (3) Air pollutant meteorology.

      (4) Air quality goals.

      (5) Air pollution effects.

   b. The department will review all land use plans and prepare recommendations for consideration in the plan adoption process.

2. **Zoning agency regulations.**

   a. The department will provide to zoning control agencies, for use in preparing regulations, information concerning:

      (1) Air quality.

      (2) Air pollutant emissions.

      (3) Air pollution meteorology.

      (4) Air quality goals.

      (5) Air pollution effects.

   b. The department will review all zoning regulations and prepare recommendations for consideration in the regulation adoption process.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-11. [Reserved]

33-15-01-12. Measurement of emissions of air contaminants.

1. **Sampling and testing.** The department may reasonably require any person responsible for emission of air contaminants to make or have made tests, at a reasonable time or interval, to determine the emission of air contaminants from any source, for the purpose of determining whether the person is in violation of any standard under this article or to satisfy other requirements under the North Dakota Century Code chapter 23-25. All tests shall be made and the results calculated in accordance with test procedures approved or specified by the department. All tests shall be conducted by reputable, qualified personnel. The department shall be given a copy of the test results in writing and signed by the person responsible for the tests.

   The owner or operator of a source shall notify the department using forms supplied by the department, or its equivalent, at least thirty calendar days in advance of any tests of emissions of air contaminants required by the department. Advanced notification for all other testing will be consistent with the requirements of the appropriate regulations but in no case will be less than thirty calendar days. If the owner or operator of a source is unable to conduct the performance test on the scheduled date, the owner or operator of a source shall notify the department as soon as practicable when conditions warrant and shall coordinate a new test date with the department.

   Failure to give the proper notification may prevent the department from observing the test. If the department is unable to observe the test because of improper notification, the test results may be rejected.

2. **The department may make tests.** The department may conduct tests of emissions of air contaminants from any source. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices as may be necessary for proper determination of the emission of air contaminants.

History: Amended effective June 1, 2001.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-01-13. Shutdown and malfunction of an installation - Requirement for notification.

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the department at least

twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:

a. Identification of the specific facility to be taken out of service as well as its location and permit number.

b. The expected length of time that the air pollution control equipment will be out of service.

c. The nature and estimated quantity of emissions of air pollutants likely to be emitted during the shutdown period.

d. Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period.

e. The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

f. Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article.

2. **Malfunctions.**

a. When a malfunction in any installation occurs that can be expected to last longer than twenty-four hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations, the person responsible for such installation shall notify the department of such malfunction as soon as possible during normal working hours. The notification must contain a statement giving all pertinent facts, including the estimated duration of the breakdown. The department shall be notified when the condition causing the malfunction has been corrected.

b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at 701-328-5188. After hours the department can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is 701-328-9921.

c. Unavoidable malfunction. The owner or operator of a source who believes any excess emissions resulted from an unavoidable malfunction shall submit a written report to the department which includes evidence that:

(1) The excess emissions were caused by a sudden, unavoidable breakdown of technology that was beyond the reasonable control of the owner or operator.

(2) The excess emissions could not have been avoided by better operation and maintenance, did not stem from an activity or event that could have been foreseen and avoided or planned for.

(3) To the extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions.

(4) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and possible.

(5) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality.

(6) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance or inadequate design of the malfunctioning equipment.

The report shall be submitted within thirty days of the end of the calendar quarter in which the malfunction occurred or within thirty days of a written request by the department, whichever is sooner.

The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that an unavoidable equipment malfunction occurred. The department may elect not to pursue enforcement action after considering whether excess emissions resulted from an unavoidable equipment malfunction. The department will evaluate, on a case-by-case basis, the information submitted by the owner or operator to determine whether to pursue enforcement action.

3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method for measuring or estimating emissions must be undertaken as soon as possible. The owner or operator of a source that uses an alternative method shall have the burden of demonstrating that the

method is accurate. Timely repair of the emission monitoring system must be made.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1992; September 1, 1997; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-01-14. Time schedule for compliance. Except as otherwise specified, compliance with the provisions of this article shall be according to the following time schedule:

1. **New installations.** Every new installation shall comply as of going into continuous routine operation for its intended purpose.

2. **Existing installations.** Every existing installation shall be in compliance as of July 1, 1970, unless the owner or person responsible for the operation of the installation shall have submitted to the department in a form and manner satisfactory to it, a program and schedule for achieving compliance, such program and schedule to contain a date on or before which full compliance will be attained, and such other information as the department may require. If approved by the department, such date will be the date on which the person shall comply. The department may require persons submitting such program to submit subsequent periodic reports on progress in achieving compliance.

General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-01-15. Prohibition of air pollution.

1. No person shall permit or cause air pollution, as defined in section 33-15-01-04.

2. Nothing in any other part of this article concerning emission of air contaminants or any other regulation relating to air pollution shall in any manner be construed as authorizing or legalizing the creation or maintenance of air pollution.

History: Amended effective June 1, 1990; September 1, 1997; June 1, 2001.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-01-16. Confidentiality of records.

1. **Public inspection.** Any record, report, or information obtained or submitted pursuant to this article will be available to the public for inspection and copying during normal working hours unless the

department certifies that the information is confidential. Anyone requesting department assistance in collecting, copying, certifying, or mailing public information must tender, in advance, the reasonable cost of those services.

2. **Information submitted as trade secrets.** The department may certify records, reports, or information, or particular part thereof, other than emission data, as confidential upon a showing that the information would, if made public, divulge methods or processes entitled to protection as trade secrets. Any person submitting trade secret information must present the information to the department in a sealed envelope marked "CONFIDENTIAL". Each page of any document claimed confidential must be clearly marked with the word "CONFIDENTIAL". The submission must contain two parts:

   a. The material claimed to contain trade secret information; and

   b. A request for confidential treatment including:

      (1) All information for which no claim is being made;

      (2) An affidavit stating how and why the information fulfills the conditions of confidentiality under this subsection; and

      (3) An index to and summary of the information submitted which is suitable for release to the public.

3. **Accepted trade secret claims.** All information which meets the test of subsection 2 must be marked by the department as "ACCEPTED" and protected as confidential information.

4. **Rejected trade secret claims.** If the department determines that information submitted pursuant to subsection 2 does not meet the criteria of that subsection for confidential treatment, the department shall promptly notify the person submitting the information of that determination. The department shall in that event give that person at least twenty days in which to:

   a. Accept the determination of the department;

   b. Request that the information be returned to the person;

   c. Further justify the contention that the information deserves protection as a trade secret; or

   d. Further limit the scope of information for which a claim of confidentiality is made.

If the person who submitted the information fails within the time period allowed by the department to demonstrate satisfactorily to the department that the information in the form presented qualifies for confidential treatment, the department shall promptly notify that person of that determination. If the person submitting the information did not request that it be returned, the department shall mark the information "REJECTED" and treat it as public information. The department's action on a reconsideration constitutes final agency action for purposes of judicial review. Appeal of this action must be to an appropriate district court.

5. **Appeal of nondisclosure claims.** Any person who identifies and tenders the reasonable cost of collecting, copying, certifying, and mailing particular information held by the department under subsection 2 may file with the department a petition for reconsideration stating how and why the public's interest would be better served by the release of the requested information than by its retention as confidential by the department. The department shall then reconsider the confidential status of the information. The department action on a petition for reconsideration constitutes final agency action for purposes of judicial review. Appeal of the department's action must be to an appropriate district court.

6. **Retention of confidential information.** All information which is accepted by the department as confidential must be stored in locked filing cabinets. Only those personnel of the department specifically designated by the department shall have access to the information contained therein. The department may not designate any person to have access to confidential information unless that person requires such access in order to carry out that person's responsibilities and duties. No person may disclose any confidential information except in accordance with the provisions of this section. No copies may be made except as strictly necessary for internal department use or as specified in subsection 8.

7. **Maintenance of log.** Persons designated by the department to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the date of such access.

8. **Transmittals of confidential information.** As necessary, confidential information acquired by the department under the provisions of the act, or this article, may be transmitted to such federal, state, or local agencies, when necessary for purposes of administration of any federal, state, or local air pollution control laws, which make an adequate showing of need to the department, provided that such transmittal is made under a continuing assurance of confidentiality.

9. **Relationship to issuance of permits.** The department may not process any application for a permit to construct or operate pursuant to chapter 33-15-14 or 33-15-15 until final agency action on confidential trade secret claims has been completed.

History: Effective October 1, 1987.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03, 23-25-06

33-15-01-17. Enforcement.

1. Enforcement action will be consistent with procedures as approved by the United States environmental protection agency.

2. Notwithstanding any other provision in this article, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of this article.

   a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

      (1) A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.

      (2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated in a federally enforceable title V permit to operate.

      (3) Compliance test methods specified in this article.

   b. The following testing, monitoring, and information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

      (1) Any federally enforceable monitoring or testing methods, including those under title 40, Code of Federal Regulations, parts 50, 51, 60, 61, 63, and 75.

      (2) Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in paragraph 1 or in subdivision a.

3. a. No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this article.

b. No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring device or method required under this article.

History: Effective June 1, 1990; amended effective December 1, 1994; September 1, 1997; March 1, 2003.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-18. Compliance certifications. Notwithstanding any other provision in this article, for the purpose of submission of compliance certifications the owner or operator is not prohibited from using the following in addition to any specified compliance methods:

1. A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.

2. Any other monitoring method approved for the source under paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated into a federally enforceable title V permit to operate.

History: Effective December 1, 1994; amended effective March 1, 2003.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-02
AMBIENT AIR QUALITY STANDARDS

Section	
33-15-02-01	Scope
33-15-02-02	Purpose
33-15-02-03	Air Quality Guidelines
33-15-02-04	Ambient Air Quality Standards
33-15-02-05	Methods of Sampling and Analysis
33-15-02-06	Reference Conditions
33-15-02-07	Concentrations of Air Contaminants in the Ambient Air Restricted

33-15-02-01. Scope. The ambient air quality standards as presented in this chapter pertain to the ambient air within the boundaries of North Dakota.

History: Amended effective October 1, 1987.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-02-02. Purpose. It is the purpose of these air quality standards to set forth levels of air quality for the maintenance of public health and welfare and to provide guidance to governmental and other parties interested in abating air pollution. Since the ambient air in North Dakota is generally cleaner than these standards, the standards are not a permit for the unnecessary degradation of air quality.

History: Amended effective October 1, 1987.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-02-03. Air quality guidelines. In keeping with the purpose of these ambient air quality standards, the quality should be such that:

1. The public health will be protected including sensitive or susceptible segments of the population.

2. Concentrations of pollutants will not cause public nuisance or annoyance.

3. Agricultural crops, animals, forest, and other plant life will be protected.

4. Visibility will be protected.

5. Metals or other materials will be protected from abnormal corrosion or damage.

6. Fabrics will not be soiled, deteriorated, or their colors affected.

7. Natural scenery will not be obscured.

History: Amended effective October 1, 1987.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-02-04. Ambient air quality standards.

1. **Particulates and gases.** The standards of ambient air quality listed in table 1 and table 2 define the limits of air contamination by particulates and gases. Any air contaminant which exceeds these limits is hereby declared to be unacceptable and requires air pollution control measures. The stated limits include normal background levels of particulates and gases.

2. **Radioactive substances.** The ambient air shall not contain any radioactive substances exceeding the concentrations specified in article 33-10.

3. **Other air contaminants.** The ambient air shall not contain air contaminants in concentrations that would be injurious to human health or well-being or unreasonably interfere with the enjoyment of property or that would injure plant or animal life. The department may establish, on a case-by-case basis, specific limits of concentration for these contaminants.

History: Amended effective October 1, 1987; January 1, 1989; September 1, 1998; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-02-05. Methods of sampling and analysis. Air contaminants listed under table 1 shall be measured by the method or methods listed in title 40, Code of Federal Regulations, parts 50 and 53. Hydrogen sulfide sampling equipment and methods must be approved by the department. Hydrogen sulfide analyzers must be designed for use as ambient air quality monitors and must be capable of meeting performance specifications as determined by the department.

The sampling and analytical procedures employed and the number, duration, and location of samples to be taken to measure ambient levels of air contaminants shall be consistent with obtaining results which are precise, accurate, and representative of the conditions being evaluated.

History: Amended effective October 1, 1987; December 1, 1994.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-02-06. Reference conditions. The standards of ambient air quality listed in table 1 are corrected to a reference temperature of twenty-five degrees

Celsius [298 degrees Kelvin] and a reference pressure of seven hundred sixty millimeters of mercury [101.3 kilopascals].

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-02-07. Concentrations of air contaminants in the ambient air restricted.

1. No person may cause or permit the emission of contaminants to the ambient air from any source in such a manner and amount that causes or contributes to a violation in the ambient air of those standards stated in section 33-15-02-04.

2. Nothing in any other part or section of this article may in any manner be construed as authorizing or legalizing the emission of air contaminants in such manner as prohibited in subsection 1.

History: Amended effective October 1, 1987; September 1, 1998; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

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.
$PM_{2.5}$	15.0	micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 15.0 micrograms per cubic meter.
	35	micrograms per cubic meter 24-hour average concentration. The standard is met when the 98th 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 99th 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 (1309 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	0.075	parts per million (147 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the three-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 ppm, as determined in accordance with 40 CFR 50, Appendix P.
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 98th 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: Amended effective December 1, 1994; April 1, 2009; April 1, 2011.

Table 2. NATIONAL AMBIENT AIR QUALITY STANDARDS

Air Contaminant	Standards (Maximum Permissible Concentrations)	
Sulfur oxides (sulfur dioxide)	0.030	parts per million (80 micrograms per cubic meter of air) maximum annual arithmetic mean concentration, not to be exceeded in a calendar year
	0.14	parts per million (365 micrograms per cubic meter of air) maximum 24-hour concentration, not to be exceeded more than once per calendar year

The standards in Table 2 will remain in effect until one year after the effective date of the designation for the one-hour sulfur dioxide standard pursuant to Section 107 of the Federal Clean Air Act except for areas designated nonattainment with respect to the standards in Table 2 and areas not meeting the requirements of a state implementation call with respect to requirements for the national ambient air quality standards in Table 2. The standards in Table 2 will apply to those areas until that area submits, and the environmental protection agency approves, an implementation plan providing for attainment of the one-hour sulfur dioxide standard.

History: Amended effective September 1, 1998; April 1, 2011.

CHAPTER 33-15-07
CONTROL OF ORGANIC COMPOUNDS EMISSIONS

Section
33-15-07-01 Requirements for Construction of Organic Compounds Facilities
33-15-07-02 Requirements for Organic Compounds Gas Disposal

33-15-07-01. Requirements for construction of organic compounds facilities.

1. **Scope**. This section applies only to those facilities considered "new" as defined in section 33-15-01-04.

2. **Water separation from petroleum products**. No person may build or install any single or multiple compartment volatile organic compounds - water separator which normally receives effluent water containing two hundred gallons [757.08 liters] per day or more of any volatile organic liquid from any equipment processing, refining, treating, storing, or handling volatile organic compounds unless such compartment is equipped with a closed-vent system and control device as defined in 40 CFR, part 60, subpart QQQ, section 60.691, as adopted in chapter 33-15-12, or a floating roof as described in 40 CFR, part 60, subpart QQQ, section 60.693-2, as adopted inchapter 33-15-12, which is properly installed and in good working order. For the purposes of this section, a volatile organic compounds - water separator means a device used to separate an oil water mixture into its separate components, which include volatile organic compounds and water, by gravity separation and skimming.

3. **Submerged fill pipes required**. No person may build or install or permit the building or installation of a stationary volatile organic compounds storage tank with a capacity of one thousand gallons [3,785.41 liters] or more unless such tank is equipped with a submerged fill pipe during filling operations or is a pressure tank as described in 40 CFR, part 60, subpart K, subparagraph 60.111(a)(1), as adopted in chapter 33-15-12, or fitted with a vapor recovery system also defined in 40 CFR, part 60, subpart K, paragraph 60.111(k), as adopted in chapter 33-15-12.

4. **Volatile organic compounds loading facilities**. No person may build or install or permit the building or installation of volatile organic compounds tank car or tank truck loading facilities handling twenty thousand gallons [75,708.24 liters] per day or more unless such facilities are operated with a submerged filling arm or other vapor emission control system. Any emissions control system utilized must have a minimum control efficiency necessary to meet the requirements of chapters 33-15-02 and 33-15-16.

5. **Pumps and compressors**. All rotating pumps and compressors handling volatile organic compounds must be equipped and operated with properly maintained seals designed for their specific product service and operating conditions.

History: Amended effective October 1, 1987; June 1, 1992; September 1,1997; September 1, 1998.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-07-02. Requirements for organic compounds gas disposal.

1. No person may cause or permit the emission of organic compounds gases and vapors, except from an emergency vapor blowdown system or emergency relief system, unless these gases and vapors are burned by flares, or an equally effective control device as approved by the department. Minor sources, as determined by the department and not subject to New Source Performance Standards (NSPS), may be granted exemptions to this subsection.

2. Organic compounds gases and vapors which are generated as wastes as the result of storage, refining, or processing operations and which contain hydrogen sulfide, shall be incinerated, flared, or treated in an equally effective manner before being released to the ambient air. The emissions from all devices designed for incinerating, flaring, or treating waste organic compounds gases and vapors shall result in compliance with chapters 33-15-02 and 33-15-16.

3. Each flare required under this section must be equipped and operated with an automatic ignitor or a continuous burning pilot.

History: Amended effective February 1, 1982; October 1, 1987; January 1,1989; June 1, 1992.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-11
PREVENTION OF AIR POLLUTION EMERGENCY EPISODES

Section	
33-15-11-01	Air Pollution Emergency
33-15-11-02	Air Pollution Episode Criteria
33-15-11-03	Abatement Strategies Emission Reduction Plans
33-15-11-04	Preplanned Abatement Strategies Plans

33-15-11-01. Air pollution emergency. This chapter is designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of an emergency due to the effects of these air contaminants on human health.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-11-02. Air pollution episode criteria. Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the department determines that the accumulation of air contaminants in any place within North Dakota is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to human health. In making this determination, the department will be guided by the criteria listed in table 6.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-11-03. Abatement strategies emission reduction plans.

1. When the department declares an air pollution alert, air pollution warning, or air pollution emergency, any person responsible for the operation of a source of air contaminants as set forth in table 7 shall take all actions as required by table 7 for such source of air contaminants for the level declared and shall put into effect the preplanned abatement strategies plan for the level declared. The department shall notify the public by means of a public announcement whenever an air pollution alert, air pollution warning, or air pollution emergency has been determined to exist.

2. When the department determines that a specified criteria level has been reached at one or more monitoring sites solely because of emissions from a limited number of sources, the department shall notify such source or sources that the actions set forth in table 7 or the preplanned abatement strategies plans are required, insofar as it

applies to such source or sources and shall be put into effect until the criteria of the specified level are no longer met.

History: Amended effective October 1, 1987.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-11-04. Preplanned abatement strategies plans.

1. Any person responsible for the operation of a source of air contaminants as set forth in table 7 shall prepare abatement strategies plans for reducing the emission of air contaminants during periods of an air pollution alert, air pollution warning, and air pollution emergency. Abatement strategies plans shall be designed to reduce or eliminate emissions of air contaminants in accordance with the objectives set forth in table 7.

2. Any person responsible for the operation of a source of air contaminants not set forth under subsection 1 shall, when requested by the department, in writing, prepare abatement strategies plans for reducing the emission of air contaminants during periods of an air pollution alert, air pollution warning, and air pollution emergency. Abatement strategies plans shall be designed to reduce or eliminate emissions of air contaminants in accordance with the objectives set forth in table 7.

3. Abatement strategies plans as required under subsections 1 and 2 shall be in writing and identify the sources of air contaminants, the approximate amount of reduction of air contaminants, and a brief description of the manner in which the reduction will be achieved during an air pollution alert, air pollution warning, and air pollution emergency.

4. During a condition of air pollution alert, air pollution warning, and air pollution emergency, abatement strategies plans as required by subsections 1 and 2 shall be made available on the premises to any person authorized to enforce the provisions of applicable rules and regulations.

5. Abatement strategies plans as required by subsections 1 and 2 shall be submitted to the department upon request within thirty days of the receipt of such request; such abatement strategies plans shall be subject to review and approval by the department. If, in the opinion of the department an abatement strategies plan does not effectively carry out the objectives as set forth in table 7, the department may disapprove it, state the reasons for disapproval, and order the preparation of an

amended abatement strategies plan within the time period specified in the order.

History: Amended effective January 1, 1989.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 23-25-02

Table 6.

Air Pollution Episode Criteria

1. Air pollution forecast:

   An internal watch by the department shall be actuated by a national weather service advisory that an atmospheric stagnation advisory is in effect or the equivalent local forecast of a stagnant atmospheric condition.

2. Air pollution alert:

   The alert level is that concentration of contaminants at which first stage control actions are to begin. An alert will be declared when any one of the following levels is reached at any monitoring site:

   SO_2-800 μg/m (0.3 ppm), 24-hour average.

   PM_{10} - 350 μg/m3, 24-hour average.

   CO-17 mg/md 0 (15 ppm), 8-hour average.

   Ozone (O_3) - 400 μg/m3 (0.2 ppm), 1-hour average.

   NO_2 - 1,130 μg/m3 (0.6 ppm), 1-hour average; 282 μg/m3 (0.15 ppm), 24-hour average.

   In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours or increase, or in the case of ozone, the situation is likely to recur within the next twenty-four hours unless control actions are taken.

3. Air pollution warning:

   The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary. A warning will be declared when any one of the following levels is reached at any monitoring site:

   SO_2 - 1,600 μg/m3 (0.6 ppm), 24-hour average.

   PM_{10} - 420 μg/m3, 24-hour average.

   CO-34 mg/m3 (30 ppm), 8-hour average.

   Ozone (O_3) - 800 μg/m3 (0.4 ppm), 1-hour average.

NO_2 - 2,260 µg/m3 (1.2 ppm), 1-hour average; 565 µg/m3 (0.3 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours or increase,40 or in the case of ozone, the situation is likely to recur within the next twenty-four hours unless control actions are taken.

4. Air pollution emergency:

The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary. An emergency will be declared when any one of the following levels is reached at any monitoring site:

SO_2 - 2,100 µg/m3 (0.8 ppm), 24-hour average.

PM_{10} - 500 µg/m3, 24-hour average.

CO-46 mg/m3 (40 ppm), 8-hour average.

Ozone (O_3) - 1,000 µg/m3 (0.5 ppm), 1-hour average.

NO_2 - 3,000 µg/m3 (1.6 ppm), 1-hour average; 750 µg/m3 (0.4 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours or increase, or in the case of ozone, the situation is likely to recur within the next twenty-four hours unless control actions are taken.

5. Termination:

Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met. At such time, the next lower status will be assumed.

Table 7.

Abatement Strategies Emission Reduction Plans
Air Pollution Alert Level
Part A. General

1. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any form.

2. The use of incinerators for the disposal of any form of solid waste shall be limited to the hours between twelve noon and four p.m.

3. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of twelve noon and four p.m.

4. Persons operating motor vehicles should eliminate all unnecessary operations.

Part B. Source Curtailment

Any person responsible for the operation of a source of air contaminants listed below shall take all required control actions for this alert level.

Source of Air Contaminants	Control Action
1. Coal or oil-fired electric power generating facilities.	a. Substantial reduction by utilization of fuels having low ash and sulfur content.
	b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing.
	c. Substantial reduction by diverting electric power generation to facilities outside of alert area.
2. Coal and oil-fired process steam generating facilities.	a. Substantial reduction by utilization of fuels having low ash and sulfur content.
	b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler

	lancing and soot blowing. c. Substantial reduction of steam load demands consistent with continuing plant operations.
3. Manufacturing industries of the following classifications: Primary metals industry. Petroleum refining operations. Chemical industries. Mineral processing industries. Grain industry. Paper and allied products. Other energy and fuel facilities.	a. Substantial reduction of air contaminants from manufacturing operations by curtailing, postponing, or deferring production and all operations. b. Maximum reduction by deferring trade waste disposal operations which emit solid particles, gas vapors and malodorous substances. c. Maximum reduction of heat load demands by processing. d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.

Air Pollution Warning Level
Part A. General

1. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any form.

2. The use of incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited.

3. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of twelve noon and four p.m.

4. Persons operating motor vehicles must reduce operations by the use of car pools and increased use of public transportation and elimination of unnecessary operation.

Part B. Source Curtailment

Any person responsible for the operation of a source of air contaminants listed below shall take all required control actions for this warning level.

Source of Air Contaminants	Control Action
1. Coal or oil-fired electric power generating facilities.	a. Maximum reduction by utilization of fuels having lowest ash and sulfur content. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Maximum reduction by diverting electric power generation to facilities outside of warning area.
2. Coal and oil-fired process steam generating facilities.	a. Maximum reduction by utilization of fuels having the lowest available ash and sulfur content. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Making ready for use a plan of action to be taken if an emergency develops.
3. Manufacturing industries which require considerable lead time for shutdown including the following classifications: Petroleum refining. Chemical industries. Primary metals industries. Glass industries. Paper and allied products. Other energy and fuel facilities.	a. Maximum reduction of air contaminants from manufacturing operations by, if necessary, assuming reasonable economic hardships by postponing production and allied operation. b. Maximum reduction by deferring trade waste disposal operations which emit solid particles, gases, vapors, or malodorous substances.

	c. Maximum reduction of heat load demands for processing.
	d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.
4. Manufacturing industries which require relatively short lead times for shut-down including the following classifications: Primary metals industries. Chemical industries. Grain industry. Mineral processing industries.	a. Elimination of air contaminants from manufacturing operations by ceasing, curtailing, postponing, or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.
	b. Elimination of air contaminants from industrial waste disposal which emits solid particles, gases, vapors, or malodorous substances.
	c. Maximum reduction of heat load demands for processing.
	d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.

Air Pollution Emergency Level
Part A. General

1. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any form.

2. The use of incinerators for the disposal of any form of solid or liquid waste shall be prohibited.

3. All places of employment described below shall immediately cease operations:

   a. Mining and quarrying of nonmetallic minerals.

   b. All construction work except that which must proceed to avoid emergent physical harm.

   c. All manufacturing establishments except those required to have in force an air pollution emergency abatement strategies plan.

   d. All wholesale trade establishments; i.e., places of business primarily engaged in selling merchandise to retailers, or industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies, except those engaged in the distribution of drugs, surgical supplies and food.

   e. All offices of local, county and state government including authorities, joint meetings, and other public bodies excepting such agencies which are determined by the chief administrative officer of local, county, or state government, authorities, joint meetings and other public bodies to be vital for public safety and welfare and the enforcement of the provisions of this order.

   f. All retail trade establishments except pharmacies, surgical supply distributors, and stores primarily engaged in the sale of food.

   g. Banks, credit agencies other than banks, securities and commodities brokers, dealers, exchanges and services; offices of insurance carriers, agents and brokers, real estate offices.

   h. Wholesale and retail laundries, laundry services and cleaning and dyeing establishments; photographic studios; beauty shops, barber shops, shoe repair shops.

   i. Advertising offices; consumer credit reporting, adjustment and collection agencies; duplicating, addressing, blueprinting; photocopying, mailing, mailing list and stenographic services; equipment rental services, commercial testing laboratories.

j. Automobile repair, automobile services, garages.

k. Establishments rendering amusement and recreational services including motion picture theaters.

l. Elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools, and public and private libraries.

4. All commercial and manufacturing establishments not included in this order will institute such actions as will result in maximum reduction of air contaminants from their operation by ceasing, curtailing, or postponing operations which emit air contaminants to the extent possible without causing injury to persons or damage to equipment.

5. The use of motor vehicles is prohibited except in emergencies with the approval of local police or state highway patrol.

Part B. Source Curtailment

Any person responsible for the operation of a source of air contaminants listed below shall take all required control actions for this emergency level.

Source of Air Contaminants	Control Action
1. Coal or oil-fired electric power generating facilities.	a. Maximum reduction by utilization of fuels having lowest ash and sulfur content. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing. c. Maximum reduction by diverting electric power generation to facilities outside of emergency area.
2. Coal and oil-fired process steam generating facilities.	a. Maximum reduction by reducing heat and steam demands to absolute necessities consistent with preventing equipment damage. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric

	turbulence for boiler lancing and soot blowing.
	c. Taking the action called for in the abatement strategies plan for the emergency level.
3. Manufacturing industries of the following classifications: Primary metals industries. Petroleum refining. Chemical industries. Mineral processing industries. Grain industry. Paper and allied products. Other energy and fuel facilities.	a. Elimination of air contaminants from manufacturing operations by ceasing, curtailing, postponing, or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment.
	b. Elimination of air contaminants from trade waste disposal processes which emit solid particles, gases, vapors, or malodorous substances.
	c. Maximum reduction of heat load demands for processing.
	d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.89.

CHAPTER 33-15-12
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Section	
33-15-12-01	General Provisions [Repealed]
33-15-12-01.1	Scope
33-15-12-02	Standards of Performance
33-15-12-03	[Reserved]
33-15-12-04	Standards of Performance [Repealed]

33-15-12-01. General provisions. Repealed effective June 1, 1992.

33-15-12-01.1. Scope. Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60, as they exist on July 2, 2010, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

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

Subpart A - General provisions.

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

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

Subpart C - Emission guidelines and compliance times.

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

Designated facilities to which this subpart applies shall comply with the requirements for state plan approval in 40 CFR parts 60.33c, 60.34c, and 60.35c, except that quarterly surface monitoring for methane under part 60.34c shall only be required during the second, third, and fourth quarters of the calendar year.

Designated facilities under this subpart shall:

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

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

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

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

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

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

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

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

*60.39e(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 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 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 HHH - Standards of performance for synthetic fiber production facilities.

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

Subpart JJJ - Standards of performance for petroleum drycleaners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate changes.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner's manual.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-12-03. [Reserved]

33-15-12-04. Standards of performance. Repealed effective June 1, 1992.

CHAPTER 33-15-13
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Section	
33-15-13-01	General Provisions [Repealed]
33-15-13-01.1	Scope
33-15-13-01.2	Emission Standards
33-15-13-02	Emission Standard for Asbestos
33-15-13-03	Emission Standard for Beryllium [Repealed]
33-15-13-04	Emission Standard for Beryllium Rocket Motor Firing [Repealed]
33-15-13-05	Emission Standard for Mercury [Repealed]
33-15-13-06	Emission Standard for Vinyl Chloride [Repealed]
33-15-13-07	Emission Standard for Equipment Leaks (Fugitive Emissions Sources) of Benzene [Repealed]
33-15-13-08	Emission Standard for Equipment Leaks (Fugitive Emission Sources) [Repealed]

33-15-13-01. General provisions. Repealed effective June 1, 1992.

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on July 2, 2010, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 2002; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-13-01.2. Emission standards.

Subpart A - General provisions.

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

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

The following definition is added:

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

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

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

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

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

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

*61.09(b) is deleted in its entirety.

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

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

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

Availability of information.

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

b. Any records, reports, or information, other than emission data, provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter must be available to the public, except that upon a showing satisfactory to the department by any person that such records, reports, or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the department will consider such records, reports, or information, or particular part thereof, confidential in accordance with the purposes of

section 1905 of title 18 of the United States Code, except that such records, reports, or information, or particular part thereof, may be disclosed to other officers, employees, or authorized representatives of the state and federal government concerned with carrying out the provisions of North Dakota Century Code chapter 23-25 or when relevant in any proceeding under North Dakota Century Code chapter 23-25.

*61.17 is deleted in its entirety.

Subpart G - [Reserved]

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

Subpart S - [Reserved]

Subpart U - [Reserved]

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

Subpart FF - National emission standard for benzene waste operations.

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

Appendix B - Test methods.

Appendix C - Quality assurance procedures.

History: Effective June 1, 1992; amended effective March 1, 1994; August 1, 1995; April 1, 1998; February 1, 2005; January 1, 2007.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

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

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

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

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

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

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

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

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

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

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

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

(3) The abatement is conducted as designed.

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

Persons acting as the project designer who are not responsible for the proper collection of personal and ambient air samples and employees of the asbestos removal contractor or facility owner are excluded from this definition.

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

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

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

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

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

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

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

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

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

p. "Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.

q. "Category II nonfriable asbestos-containing material" means any material, excluding category I nonfriable asbestos-containing material, containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40,Code of Federal Regulations, part 763, section 1, polarized

light microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by mechanical forces expected to act on the material.

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

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

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

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

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

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

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

y. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any

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

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

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

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

cc. "Glove-bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove-bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the occupational safety and health administration's (OSHA's) final rule on occupational exposure to asbestos, appendix G, title 29, Code of Federal Regulations, 1926.58.

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

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

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

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

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

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

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

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

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

jj. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operations, or any other preventable upset conditions, equipment breakdown, or process failure.

kk. "Manufacturing" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos, with any other materials, including commercial asbestos, and the processing of this

combination into a product. Chlorine production is considered a part of manufacturing.

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

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

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

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

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

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

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

ss. "Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than ten units or detached single-family homes. The term includes, industrial and office buildings, residential apartment buildings and condominiums of ten or more dwelling units, government-owned

buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses, and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.

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

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

(1) Friable asbestos material.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Standard for asbestos mills.**

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

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

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

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

(a) Maintenance schedule.

(b) Recordkeeping plan.

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

(a) Date and time of each inspection.

(b) Presence or absence of visible emissions.

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

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

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

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

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

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

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

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

5. **Standard for manufacturing.**

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

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

(2) The manufacture of cement products.

(3) The manufacture of fireproofing and insulating materials.

(4) The manufacture of friction products.

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

(6) The manufacture of resilient floor covering.

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

(8) The manufacture of plastics and rubber materials.

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

(10) The manufacture of shotgun shell wads.

(11) The manufacture of asphalt concrete.

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

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

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

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

observation of at least fifteen seconds duration per source of emissions.

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

(a) Maintenance schedule.

(b) Recordkeeping plans.

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

(a) Date and time of each inspection.

(b) Presence or absence of visible emissions.

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

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

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

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

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

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

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

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

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

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

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

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

(a) To determine whether this paragraph applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount of regulated asbestos-containing material to be removed or stripped over the maximum period of time a prediction can be made, not to exceed one calendar year of January first through December thirty-first.

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

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

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

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

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

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

(3) Postmark or deliver the notice as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(g) Type of operation: demolition or renovation.

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

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

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

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

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

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

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

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

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

(1) Remove all regulated asbestos-containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing material need not be removed before demolition if:

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

(b) It is on a facility component that is encased in concrete or other similarly hard material and adequately wetted whenever exposed during demolition and

maintained wet until it is disposed of in accordance with subsection 11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) After a facility component covered with, coated with, or containing regulated asbestos-containing material has been taken out of the facility as units or in sections pursuant to paragraph 2 of this subdivision it must be kept contained in leaktight wrapping or:

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

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

filtration or be designed and operated in accordance with the requirements in subsection 13.

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

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

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

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

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

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

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

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

Regulated asbestos-containing material contained in leaktight wrapping that has been removed in accordance with paragraph 4 of this subdivision and subitem c of item 2 of subparagraph a of paragraph 3 of this subdivision need not be wetted.

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

(a) Need not comply with the wetting requirements of subparagraph a of paragraph 2 of subdivision c of subsection 4 and paragraph 3 of this subdivision.

The owner or operator shall comply with the other requirements in this subdivision; and

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

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

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

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

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

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

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

8. **Standard for fabricating.**

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

(1) The fabrication of cement building products.

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

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

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

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

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

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

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

(a) Maintenance schedule.

(b) Recordkeeping plan.

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

(a) Date and time of each inspection.

(b) Presence or absence of visible emissions.

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

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

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

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

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

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

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

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

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

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

b. Discharge no visible emissions to the outside air from the transfer of asbestos waste from control devices to the tailings conveyor,

or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with subdivision b of subsection 11 or subdivision c of this subsection.

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

(1) Use a wetting agent as follows:

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

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

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

(2) Use an alternative emission control and treatment method that has received prior written approval by the department and administrator. To obtain approval for an alternative method, a written application must be submitted to the department and the administrator of the United States environmental protection agency demonstrating that the following criteria are met:

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

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

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

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

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

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

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

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

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

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

(c) After wetting, seal all asbestos-containing waste material in leaktight containers while wet. For materials that will not fit into containers without additional breaking, put materials into leaktight wrapping;

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

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

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

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

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

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

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

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

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

(5) As applied to demolition and renovation, the requirements of subdivision a of this subsection do not apply to category I or

category II nonfriable asbestos-containing material waste that is not or will not become crumbled, pulverized, or reduced to powder.

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

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

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

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

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

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

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

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

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

(3) The temporary storage facility must be inspected at least once per week to ensure that good structural integrity of the storage facility is maintained and that the facility remains secure.

(4) The maximum length of time allowed for temporary storage of an asbestos-containing waste material may not exceed one hundred eighty days.

d. Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must:

(1) Be displayed in such a manner and location that a person can easily read the legend.

(2) Conform to the requirements for twenty-inch by fourteen-inch [50.8-centimeter by 35.56-centimeter] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this paragraph; and

(3) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.
Authorized Personnel Only	14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

e. Prior to transportation of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing waste material off the facility site:

(1) The owner or operator and the transporter shall ensure that a waste shipment record has been appropriately completed and signed by the generator, and accompanies the waste to the disposal site. The waste shipment record must include the following information:

(a) Name, address, and telephone number of the facility owner or operator where the asbestos-containing waste materials were generated.

(b) Location of the facility where asbestos-containing waste material was generated.

(c) The name and address of this department as being the responsible agency for administering the asbestos NESHAP program.

(d) Estimated quantity of asbestos-containing waste material in cubic yards.

(e) Name and physical site location of the waste disposal site where the asbestos-containing waste will be deposited.

(f) The name and telephone number of the disposal site operator.

(g) The date transported.

(h) The name, address, and telephone number of the transporters.

(i) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record signed by the owner or operator of the designated disposal site is not received by the waste generator within thirty-five days of the date the waste was accepted by the initial transporter, contact the transporter or the owner or operator, or both, of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to this department if a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site is not received by the waste generator within forty-five days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(a) A copy of the waste shipment record for which a confirmation of delivery was not received; and

(b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the result of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site for at least two years.

(6) A copy of the completed waste shipment record must be submitted to the department by the owner or operator of the facility no later than ten days after the owner or operator of the facility receives the completed waste shipment record from the landfill operator.

f. Furnish upon request, and make available for inspection by the department, all records required under this section.

g. If an acceptable disposal site, as determined by subsection 15, is located on the same property as the facility where asbestos-containing waste materials were generated, then the recordkeeping requirements of subdivision e of this subsection do not apply. The owner shall maintain records which include information on the quantity, location, and date of asbestos-containing waste disposal activities.

12. **Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.** Each owner or operator of any inactive waste disposal site that received deposits of asbestos-containing waste material generated by sources covered under subsection 3, 5, 8, or 10, shall:

a. Comply with one of the following:

(1) Discharge no visible emissions to the outside air from an inactive waste disposal site subject to this subsection;

(2) Cover the asbestos-containing waste material with at least fifteen centimeters [6 inches] of compacted non-asbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material;

(3) In areas where vegetation would be difficult to maintain, cover the asbestos-containing waste material with at least sixty centimeters [2 feet] of compacted non-asbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste or cover with at least six inches [15.24 centimeters] of compacted non-asbestos-containing material and at least an additional

three inches [7.62 centimeters] of a nonasbestos crushed rock cover in place of the vegetation; or

(4) For inactive waste disposal sites for asbestos tailings, apply a resinous-based or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent. Obtain prior approval of the department to use other equally effective dust suppression agents. For purposes of this paragraph, used, spent, or other wasteoil is not considered a dust suppression agent.

b. Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph 2 or 3 of subdivision a of this subsection.

(1) Display warning signs at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

(a) Be posted in such a manner and location that a person can easily read the legend.

(b) Conform to the requirements for fifty-one-centimeter by thirty-six-centimeter [20-inch by 14-inch] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this subdivision.

(c) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.
Authorized Personnel Only	14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper two lines.

(2) Fence the perimeter of the site in a manner adequate to deter access by the general public.

(3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.

c. The owner or operator may use an alternative control method that has received prior approval of the department and administrator of the United States environmental protection agency rather than comply with the requirements of subdivision a or b of this subsection.

d. Notify the department, in writing, at least forty-five days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of a new start date must be provided to the department at least ten days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the department may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

e. Within sixty days of a site becoming inactive, record in accordance with state law a notation on the deed to the facility property and on any instrument that would normally be examined during a title search. This notation will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used for the disposal of asbestos-containing waste material;

(2) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in subdivision f of subsection 15 have been filed with the department; and

(3) The site is subject to this section.

13. **Air-cleaning.**

a. The owner or operator who elects to use air-cleaning, as permitted in subsections 3, 5, 6, 7, 8, 10, and 11 shall:

(1) Use fabric filter collection devices except as noted in subdivision b of this subsection, doing all of the following:

(a) Ensuring that the airflow permeability, as determined by A.S.T.M. method D737-75, does not exceed nine $m^3/min/m^2$ [30 $ft^3/min/ft^2$] for woven fabrics or eleven $m^3/min/m^2$ [35 $ft^3/min/ft^2$] for felted fabrics, except that twelve $m^3/min/m^2$ [40 $ft^3/min/ft^2$] for woven and fourteen $m^3/min/m^2$[45 $ft^3/min/ft^2$] for felted fabrics is allowed for filtering air from asbestos ore dryers.

(b) Ensuring that felted fabric weighs at least four hundred seventy-five grams per square meter [14 ounces per square yard] and is at least one and six-tenths millimeters [1/16 inch] thick throughout.

(c) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.

(2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this subsection. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the asbestos material.

(3) For fabric filters installed after January 10, 1989, provide for easy inspection for faulty bags.

b. There are the following exceptions to paragraph 1 of subdivision a:

(1) If the use of fabric creates a fire or explosion hazard or the department determines that a fabric filter is not feasible, the department may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals [40 inches water gauge pressure].

(2) Use a high-efficiency particulate air filter that is certified to be at least ninety-nine and ninety-seven hundredths percent efficient for particles with a diameter size of three-tenths microns and greater.

(3) The department and administrator of the United States environmental protection agency may authorize the use of filtering equipment other than that described in subdivisions a and b of this subsection if the owner or operator demonstrates to the administrator and the department's satisfaction that it is equivalent to the described equipment in filtering asbestos material.

14. **Reporting.**

a. Any existing source to which this section applies (with the exception of sources subject to subsections 4, 6, 7, and 9) which has not previously supplied a notice to this department or the administrator, shall provide such notice within ninety days of the effective date of this regulation. Any new source to which this section applies shall provide notice to this department within ninety days of the effective startup date of the source. Changes to the information provided in a notice must be submitted to this department within thirty days of the change taking place. The notice shall provide the following information to the department:

(1) A description of the emission control equipment used for each process; and

(2) If a fabric filter device is used to control emissions;

(a) The airflow permeability in $m^3/min/m^2$ if the fabric filter device uses a woven fabric and; if the fabric is synthetic, whether the fill yarn is spun or not spun.

(b) If the fabric filter device uses a felted fabric, the density in g/m^2, the minimum thickness in millimeters, and the airflow permeability in $m^3/min/m^2$.

(3) If a high-efficiency particulate air filter is used to control emissions, the certified efficiency.

(4) For sources subject to subsections 10 and 11:

(a) A brief description of each process that generates asbestos-containing waste material;

(b) The average volume of asbestos-containing waste material disposed of in cubic yards per day;

(c) The emission control methods used in all stages of waste disposal; and

(d) The type of disposal site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(5) For sources subject to subsections 12 and 15:

(a) A brief description of the site; and

(b) The method or methods used to comply with the standard, or alternative procedures to be used.

b. The information required by subdivision a of this subsection must accompany the information required by 40 Code of Federal Regulations 61.10. Active waste disposal sites subject to subsection 15 shall also comply with this provision. Roadways, demolition and renovations, spraying, and insulating materials are exempted from the requirements of 40 Code of Federal Regulations 61.10(a).

15. **Standard for active waste disposal sites.** To be an acceptable site for disposal of asbestos-containing waste material under subsections 10, 11, and 17, an active waste disposal site must meet the requirements of this subsection.

a. Either there shall be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of subdivisions c and d of this subsection must be met.

b. Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph 1 of subdivision c of this subsection must be met.

(1) Warning signs must be displayed at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(a) Be posted in such a manner and location that a person may easily read the legend.

(b) Conform to the requirements of fifty-one centimeters by thirty-six centimeters [20 inches by 14 inches] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4), and this subsection.

(c) Display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm [1 in.] Sans Serif, Gothic, or Block
Avoid Creating Dust	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block
Breathing Asbestos Dust May Cause Lung Disease and Cancer	14 Point Gothic

Spacing between lines must be at least equal to the height of the upper two lines.

(2) The perimeter of the disposal site must be fenced in order to adequately deter access by the general public.

(3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.

c. Rather than meet the no visible emission requirements of subdivision a of this subsection, an active waste disposal site would be an acceptable site if at the end of each operating day, or at least once every twenty-four-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous twenty-four-hour period is covered with either:

(1) At least fifteen centimeters [6 inches] of compacted non-asbestos-containing material; or

(2) A resinous-based or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. This agent must be used in the manner and frequency recommended for the particular dust by the manufacturer of the dust suppression agent. Other equally effective dust suppression agents may be used upon prior approval by the department. For purposes of this paragraph, used, spent, or other waste oil is not considered a dust suppression agent.

d. Rather than meet the no visible emission requirements of subdivision a of this subsection, use an alternative emission control method that has received prior approval by the department and administrator of the United States environmental protection agency.

e. For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(1) Maintain waste shipment records which include the following information:

(a) The name, address, and telephone number of the waste generator.

(b) The name, address, and telephone number of the transporters.

(c) The quantity of the asbestos-containing material in cubic yards.

(d) The presence of improperly enclosed or uncovered wastes or any asbestos-containing waste material not sealed in leaktight containers. Report in writing to this department by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

(e) The date of the receipt.

(2) As soon as possible and no longer than thirty days after receipt of the waste send a copy of the signed waste shipment record to the waste generator.

(3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within fifteen days after receiving the waste, immediately report in writing to this department. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(4) Retain a copy of all records and reports required by this subdivision for at least two years.

f. Maintain until closure, records of the location, depth and area and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

g. Upon closure, comply with all the provisions of subsection 12.

h. Submit to this department, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

i. Furnish upon request and make available during normal business for inspection by this department, all records required under this section.

j. Comply with subdivision d of subsection 12 if it becomes necessary to excavate or otherwise disturb asbestos-containing waste material that has been previously covered.

16. **Asbestos abatement licensing and certification.** No public employees or employees of asbestos contractors shall engage in any asbestos abatement activity or provide asbestos abatement project monitoring unless they are certified with the department as provided in this subsection. No person shall engage in any asbestos abatement activity in a public or commercial building unless the person is certified with the department as provided in this subsection. Certification will be for a period of one year from the completion date of the initial training course or the last refresher course in the appropriate discipline. All asbestos contractors and firms who provide asbestos abatement or asbestos abatement project monitoring services, must be licensed with this department, as provided in this subsection, prior to beginning asbestos abatement or asbestos abatement project monitoring activities. At least one person having completed the requirements for supervisor certification of subdivision b of this subsection is required to be at the worksite at all times while work is in progress, if the work involves repair, removal, encapsulation, enclosure, or handling of regulated asbestos-containing material if the work is being conducted by an asbestos contractor or public employees. At least one onsite individual having completed the supervisor training requirement of subdivision b of this subsection is required to be present if the activity is regulated by subsection 6 and the work is being conducted by employees of the owner.

a. Asbestos workers. All asbestos workers employed by asbestos abatement contractors and all public employees and all other asbestos workers in public and commercial buildings engaged in the repair, removal, enclosure, encapsulation, or handling of regulated asbestos-containing material, must obtain certification as outlined in all paragraphs of this subdivision except as provided in subdivision h.

(1) Application. Any applicant desiring certification as an asbestos worker shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of fifty dollars except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.

(2) Initial training. Any applicant desiring certification as an asbestos worker shall complete the initial training requirements for asbestos worker accreditation under title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course designed for asbestos workers. The training course must have received approval from the environmental protection agency or the department.

(3) Examination. Any applicant for certification shall pass a written examination administered by the department. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations may be given before requiring attendance of another initial training course. Information concerning the testing arrangements can be obtained from the department.

(4) Refresher training. Any asbestos worker who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The course content must include a review of the changes in federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, the asbestos worker shall complete a refresher course within one year of the last refresher course.

(5) Certification renewal. Any asbestos worker who desires to renew their certification must have attended a refresher training course within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such course and a recertification fee of fifty dollars. Certification is current for a period of twelve months from the date of the training course. If an asbestos worker does not satisfy the refresher training requirements

of this subdivision within two years of the date of the initial training course or of the last refresher training course, then the individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification.

(6) The certification card issued by the department must be available at the worksite for each asbestos worker.

b. Other asbestos disciplines. Any individual, except asbestos workers, acting as or acting on behalf of an asbestos contractor or as a public employee who performs an asbestos abatement service or any individual who performs asbestos abatement project monitoring on behalf of a contracting firm or as a public employee or any other individual who performs asbestos abatement in a public or commercial building must obtain certification as outlined in all paragraphs of this subdivision. This certification requirement applies to asbestos abatement supervisors, asbestos inspectors, asbestos management planners, asbestos abatement project designers, and asbestos abatement project monitors except as provided in subdivision h.

(1) Application. Any person desiring certification in the disciplines of asbestos inspector, asbestos management planner, asbestos abatement project designer, asbestos abatement project monitor, and asbestos abatement supervisor shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of fifty dollars for each discipline within which the applicant is seeking certification except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.

(2) The initial training requirements are as follows:

(a) Any applicant desiring certification as an asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement supervisor or any individual required to meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete the initial training requirements set forth in title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course in the appropriate discipline. The training course must have received approval in the respective

discipline from the environmental protection agency or the department.

(b) Asbestos abatement project monitors must have a valid state certification as asbestos abatement supervisor or asbestos abatement project designer and shall have completed a NIOSH 582 or equivalent air sampling course of not less than four days in length.

(3) Examination. Any applicant for certification in a specific discipline except asbestos abatement project monitor shall pass a written examination administered by the department for that discipline. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations shall be given before requiring attendance of another initial training course.

(4) Refresher training. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, or asbestos abatement project designer who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, or any individual who must meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The course content must include a review of the changes in the federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, these persons shall complete a refresher course designed for the respective disciplines within one year of the last refresher course.

(5) Certification renewal. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement project monitor who desires to renew the person's certification must have attended a refresher training course in the appropriate discipline within twelve months prior to

submittal of the renewal application. The renewal application shall include proof of attendance at such a course and a recertification fee of fifty dollars per discipline. Certification is current for a period of twelve months from the date of the training course. If an individual does not satisfy the refresher training requirements of this subdivision in their respective discipline within two years of the date of the initial training or of the last refresher training, then that individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification. Refresher training of the air sampling course for project monitors is not required.

(6) The certification card issued by the department must be available at the worksite.

c. Asbestos contractor license. Each contractor who performs asbestos abatement services or performs asbestos abatement project monitoring services in the state shall obtain an asbestos contractor license except as provided in subdivision h.

(1) Submit an application to the department on forms supplied by the department. An application shall be accompanied by a nonrefundable fee of one hundred fifty dollars.

(2) The license fee will cover the period from January first through December thirty-first of each year unless the license is suspended, revoked, or denied as specified in subdivision f. The fee shall be one hundred fifty dollars regardless of the application date. Following the initial submittal, the renewal fee shall be due and payable by January thirtieth of the following year.

(3) A contractor seeking an asbestos contractor license must have completed the appropriate training and certification requirements in subdivision b of this subsection. The contractor may designate an employee who has completed this requirement to serve as the contractor's agent for the purposes of obtaining an asbestos contractor license.

(4) Asbestos contractors who provide multiple services are not required to pay additional license fees.

(5) All certifiable services offered by an asbestos contractor must be performed by persons certified in accordance with subdivisions a and b of this subsection.

(6) A copy of the asbestos contractor license shall be made available at the worksite.

(7) This license does not exempt, supersede, or replace any other state or local licensing or permitting requirements.

d. Approved initial and refresher training courses. The department will maintain and provide a listing of approved initial and refresher training courses. Applicants seeking approval of courses, other than those present on the department list, must submit information on the course content to the department. The course content must satisfy the minimum requirements of the model contractor accreditation plan as amended February 3, 1994. The department will advise the applicant whether the course is approved within thirty days of receipt of the necessary information. Training course providers will be required to meet all applicable requirements contained in title 40, Code of Federal Regulations, part 763, appendix C to subpart E as amended February 3, 1994.

e. Reciprocity. Each applicant for asbestos worker or asbestos contractor certification who is licensed or certified for asbestos abatement in another state may petition the department for certification without written examination. The department shall evaluate the requirements in such other states and shall issue the certification without examination if the department determines that the requirements in such other states are at least as stringent as the requirements for certification in North Dakota. Each application for certification pursuant to this subdivision shall submit an application accompanied by a nonrefundable fee of fifty dollars.

f. Suspension, revocation, or denial. An asbestos certification or license may be suspended, revoked, or denied if:

(1) Violations of the requirements of this section are noted;

(2) Another state has revoked, suspended, or denied a license or certification for violations of applicable standards;

(3) An incomplete application is filed; or

(4) The required fee is not submitted.

g. Public employees will not be required to pay the fifty dollar certification or recertification fees.

h. Any individual or asbestos contractor engaged in repair, removal, enclosure, or encapsulation activities involving less than or equal to three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing materials, are exempt from the certification and licensing requirements of this subsection.

i. Upon written request, the department, at its discretion, may review training course material and conduct an audit of a training course to determine if the course and examination meet the training requirements of title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994. Under the authority granted to this department by the environmental protection agency courses that this department determine to meet the model contractor accreditation plan shall be listed in the federal register list of approved courses.

(1) Training courses seeking department approval shall submit the material necessary for the department to conduct the review, including the submittal requirements listed in title 40, Code of Federal Regulations, part 763, appendix C, subpart E, model contractor accreditation plan as amended February 3, 1994.

(2) The department must be provided access, without cost, to any asbestos course conducted in this state to determine if the course meets the requirement of the environmental protection agency model contractor accreditation plan as amended February 3, 1994. Following such an audit, the department may rescind approval or refuse to accept as adequate any course determined not to meet the training requirements of the environmental protection agency model contractor accreditation plan.

(3) Any training provider requesting a review of the provider's course for approval by this department shall submit a filing fee of one hundred fifty dollars plus an application processing fee. The application processing fee will be based on the actual processing costs, including time spent by this department to conduct the course review and course audit, and any travel and lodging expenses the department incurs conducting these items. Following the course review and audit, and after making a determination on the accreditation status of the course, a statement will be sent to the applicant listing the remaining application processing costs. The statement must be sent within fifteen months of the submittal of the initial filing fee.

17. **Standard for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.** Each owner or operator of an operation that converts regulated asbestos-containing material and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

a. Obtain the prior written approval of this department and the administrator of the United States environmental protection agency to construct the facility. To obtain approval, the owner or operator shall provide the department and the administrator of the United States environmental protection agency with the following information:

(1) Application to construct pursuant to chapter 33-15-14.

(2) In addition to the information requirements of chapter 33-15-14, provide a:

(a) Description of the waste feed handling and temporary storage.

(b) Description of process operating conditions.

(c) Description of the handling and temporary storage of the end products.

(d) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.

(3) Performance test protocol, including provisions for obtaining information required under subdivision b of this subsection.

(4) The department may require that a demonstration of the process be performed prior to approval of the application to construct.

b. Conduct a startup performance test. Test results must include:

(1) A detailed description of the types and quantities of nonasbestos material, regulated asbestos-containing material, and asbestos-containing waste material processed (e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc.). Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(3) Results of analyses using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as eight-hour composite samples (one 200-gram [seven-ounce] sample per hour), beginning with the initial introduction of regulated

asbestos-containing material or asbestos-containing waste material and continuing until the end of the performance test.

(4) A description of operating parameters, such as temperature and residence times, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

c. During the initial ninety days of operation:

(1) Continuously monitor and log the operating parameters identified during startup performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Monitor input materials to ensure that they are consistent with the test feed materials described during startup performance tests in paragraph 1 of this subdivision.

(3) Collect and analyze samples taken as ten-day composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of all output materials for the presence of asbestos. Composite samples may be for fewer than ten days. Transmission electron microscopy must be used to analyze the output materials for the presence of asbestos. During the initial ninety-day period, all output materials must be stored onsite until analysis shows the material to be asbestos-free or be disposed of as asbestos-containing waste material according to subsection 11.

d. After the initial ninety days of operation:

(1) Continuously monitor and record the operating parameters identified during startup performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output material shall be:

(a) Disposed of as asbestos-containing waste material according to subsection 11;

(b) Recycled as waste feed during process operations within the established range of operating conditions; or

(c) Stored temporarily onsite in a leaktight container until analyzed for asbestos content. Any product material that is not asbestos-free shall either be disposed of as asbestos-containing waste material or recycled as waste feed to the process.

(2) Collect and analyze monthly composite samples (one 200-gram [seven-ounce] sample collected every eight hours of operation) of the output material. Transmission electron microscopy must be used to analyze the output material for the presence of asbestos.

e. Discharge no visible emissions to the outside air from any part of the operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to or are vented to the outside air.

f. Maintain records onsite and include the following information:

(1) Results of startup performance testing and all subsequent performance testing, including operating parameters, feed characteristics, and analyses of output materials.

(2) Results of the composite analysis required during the initial ninety days of operation under subdivision c of this subsection.

(3) Results of the monthly composite analysis required under subdivision d of this subsection.

(4) Results of continuous monitoring and logs of process operating parameters required under subdivisions c and d of this subsection.

(5) Information on waste shipments received as required in subdivision e of subsection 15.

(6) For output materials when no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which output materials were sold or deposited and the date of sale or disposal.

(7) Retain records required by this subdivision for at least two years.

g. Submit the following reports to the department:

(1) A report for each analysis of product composite samples performed during the initial ninety days of operation.

(2) A quarterly report, including the following information concerning activities during each consecutive three-month period:

(a) Results of analyses of monthly product composite samples.

(b) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.

(c) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily onsite until analyzed for asbestos content.

(d) The information on waste disposal activities as required in subdivision f of subsection 15.

h. Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this section. Output material in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the startup performance testing, unless shown by transmission electron microscopy analysis to be asbestos-free shall be considered to be asbestos-containing waste and must be handled and disposed of in accordance with subsections 11 and 15 or reprocessed while all of the established operating parameters are being met.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; January 1, 1996; September 1, 2002; February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-03.1
Law Implemented: NDCC 23-25-03, 23-25-03.1

33-15-13-03. Emission standard for beryllium. Repealed effective June 1, 1992.

33-15-13-04. Emission standard for beryllium rocket motor firing. Repealed effective June 1, 1992.

33-15-13-05. Emission standard for mercury. Repealed effective June 1, 1992.

33-15-13-06. Emission standard for vinyl chloride. Repealed effective June 1, 1992.

33-15-13-07. Emission standard for equipment leaks (fugitive emissions sources) of benzene. Repealed effective June 1, 1992.

33-15-13-08. Emission standard for equipment leaks (fugitive emission sources). Repealed effective June 1, 1992.

CHAPTER 33-15-14
DESIGNATED AIR CONTAMINANT SOURCES, PERMIT TO CONSTRUCT, MINOR SOURCE PERMIT TO OPERATE, TITLE V PERMIT TO OPERATE

Section	
33-15-14-01	Designated Air Contaminant Sources
33-15-14-01.1	Definitions
33-15-14-02	Permit to Construct
33-15-14-03	Minor Source Permit to Operate
33-15-14-04	Permit Fees [Repealed]
33-15-14-05	Common Provisions Applicable to Both Permit to Construct and Permit to Operate [Repealed]
33-15-14-06	Title V Permit to Operate
33-15-14-07	Source Exclusions From Title V Permit to Operate Requirements

33-15-14-01. Designated air contaminant sources. Pursuant to subsection 1 of North Dakota Century Code section 23-25-04, stationary sources within the following source categories are designated as air contaminant sources capable of causing or contributing to air pollution, either directly or indirectly.

1. The following chemical process facilities:

   a. Adipic acid.

   b. Ammonia.

   c. Ammonium nitrate.

   d. Carbon black.

   e. Charcoal.

   f. Chlorine.

   g. Chlor-alkali manufacturing.

   h. Detergent and soap.

   i. Explosives (trinitrotoluene and nitrocellulose).

   j. Hydrochloric acid.

   k. Hydrofluoric acid.

   l. Nitric acid.

   m. Paint and varnish manufacturing.

n. Phosphoric acid.

o. Phthalic anhydride.

p. Plastics manufacturing.

q. Printing ink manufacturing.

r. Sodium carbonate.

s. Sulfur production and recovery.

t. Sulfuric acid.

u. Synthetic fibers.

v. Synthetic rubber.

w. Terephthalic acid.

x. Alcohol.

y. Cresylic acids.

z. Phenol.

aa. Polymer manufacturing and coating operations.

2. The following food and agricultural facilities:

a. Agricultural drying and dehydrating operations.

b. Ammonium nitrate.

c. Cheese whey drying and processing.

d. Coffee roasting.

e. Cotton ginning.

f. Feed, grain, and seed handling and processing.

g. Fermentation processes.

h. Fertilizers.

i. Fishmeal processing.

j. Meat smokehouses.

k. Orchard heaters.

l. Potato processing.

m. Rendering plants.

n. Starch manufacturing.

o. Sugarbeet processing.

3. The following metallurgical facilities:

a. Primary metals facilities:

(1) Aluminum ore reduction.

(2) Copper smelters.

(3) Ferroalloy production.

(4) Iron and steel mills.

(5) Lead smelters.

(6) Metallurgical coke manufacturing.

(7) Zinc.

b. Secondary metals facilities:

(1) Aluminum operations.

(2) Brass and bronze smelting.

(3) Ferroalloys.

(4) Ferrous foundries.

(5) Gray iron foundries.

(6) Lead smelting.

(7) Magnesium smelting.

(8) Nonferrous foundries.

(9) Steel foundries.

(10) Zinc processes.

c. Electrolytic plating operations.

4. The following mineral products facilities:

a. Asphalt roofing.

b. Asphaltic concrete plants.

c. Bricks and related clay refractories.

d. Calcium carbide.

e. Ceramic and clay processes.

f. Clay and fly ash sintering.

g. Coal cleaning.

h. Coal drying.

i. Coal mining.

j. Coal handling and processing.

k. Concrete batching.

l. Fiberglass manufacturing.

m. Frit manufacturing.

n. Glass manufacturing.

o. Gypsum manufacturing.

p. Leonardite mining, drying, and processing.

q. Lime manufacturing.

r. Mineral wool manufacturing.

s. Paperboard manufacturing.

t. Perlite manufacturing.

u. Phosphate rock preparation.

v. Portland cement manufacturing, bulk handling, and storage.

w. Rock, stone, gravel, and sand quarrying and processing.

x. Uranium mining, milling, and enrichment.

y. Calciners and dryers.

5. The following energy and fuel facilities:

a. Coal gasification.

b. Coal liquefaction.

c. Crude oil and natural gas production.

d. Fossil fuel steam electric plants.

e. Fuel conversion plants.

f. Natural gas processing.

g. Petroleum refining and petrochemical operations.

h. Petroleum storage (storage tanks and bulk terminals).

6. The following wood processing facilities:

a. Plywood veneer and layout operations.

b. Pulpboard manufacturing.

c. Wood pulping.

d. Sawmills.

e. Wood products manufacturing.

7. The following waste management units or facilities:

a. Afterburners.

b. Automobile body incinerators.

c. Conical burners.

d. Flares.

e. Gaseous and liquid organic compounds incinerators.

f. Industrial waste incinerators.

g. Open burning.

h. Open pit incinerators.

i. Infectious waste incinerators.

j. Refuse incinerators.

k. Salvage incinerators.

l. Sewage sludge incinerators.

m. Wood waste incinerators

n. Municipal waste combustors.

8. The following miscellaneous facilities:

a. Drycleaning and laundry operations.

b. Fuel burning equipment.

c. Internal combustion engines.

d. Surface coating operations.

e. Wastewater treatment plants.

f. Water cooling towers and water cooling ponds.

g. Stationary gas turbines.

h. Lead acid battery manufacturing.

i. Hydrocarbon contaminated soil remediation projects.

9. Any source for which an applicable federal standard of performance [40 CFR 60] has been adopted in chapter 33-15-12.

10. Any source for which an applicable national emission standard for hazardous air pollutants [40 CFR 61] has been adopted in chapter 33-15-13.

11. Any source which is subject to review under federal prevention of significant deterioration of air quality regulations [40 CFR 51.166].

12. Any source which is determined by the department to cause or contribute to a violation of any state ambient air quality standard or violates the other provisions of chapter 33-15-02.

13. Any source subject to title V permitting requirements in section 33-15-14-06.

14. Any major source to which a national emission standard for hazardous air pollutants for source categories [40 CFR 63] would apply.

15. Other stationary sources subject to a standard or requirement under the Federal Clean Air Act as amended.

History: Amended effective October 1, 1987; March 1, 1994; August 1, 1995; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1
Law Implemented: NDCC 23-25-04, 23-25-04.1

33-15-14-01.1. 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 33-15-13, 33-15-15 (excluding increment consumption by nonmajor sources), and 33-15-22, it shall have the meaning given for construction in each of the respective chapters.

   b. For all other sources it means the placement or erection, including 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 33-15-14-06.

4. "Minor source" means any designated air contaminant source under section 33-15-14-01 which is not required to obtain a title V permit to operate under section 33-15-14-06.

5. "Potential to emit" has the meaning given to it in section 33-15-14-06.

6. "Stationary source" has the meaning given to it in section 33-15-14-06.

History: Effective March 1, 1994; amended effective January 1, 1996.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-14-02. Permit to construct.

1. **Permit to construct required.** No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter.

   The initiation of activities that are exempt from the definition of construction, installation, or establishment in section 33-15-14-01.1, prior to obtaining a permit to construct, are at the owner's or operator's own risk. These activities have no impact on the department's decision to issue a permit to construct. The initiation or completion of such activities conveys no rights to a permit to construct under this section.

2. **Application for permit to construct.**

   a. Application for a permit to construct a new installation or source must be made by the owner or operator thereof on forms furnished by the department.

   b. A separate application is required for each new installation or source subject to this chapter.

   c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance with this article and will notify the department, in writing, of the startup of operation of such source.

3. **Alterations to source.**

a. The addition to or enlargement of or replacement of or alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.

b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an amount greater than that specified in subdivision a of subsection 5 of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted must be considered to be construction, installation, or establishment of a new source, except that:

(1) Routine maintenance, repair, and replacement may not be considered a physical change.

(2) The following may not be considered a change in the method of operation:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source and it is not limited by a permit condition.

(b) An increase in the hours of operation if it is not limited by a permit condition.

(c) Changes from one operating scenario to another provided the alternative operating scenarios are identified and approved in a permit to operate.

(d) Trading of emissions within a facility provided:

[1] These trades have been identified and approved in a permit to operate; and

[2] The total facility emissions do not exceed the facility emissions cap established in the permit to operate.

(e) Trading and utilizing acid rain allowances provided compliance is maintained with all other applicable requirements.

c. Any owner or operator of a source who requests an increase in the allowable sulfur dioxide emission rate for the source pursuant to section 33-15-02-07 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 6.

4. **Submission of plans - Deficiencies in application.** As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.

a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of air quality). These documents are incorporated by reference.

b. When an air quality impact model specified in the documents incorporated by reference in subdivision a is inappropriate, the model may be modified or another model substituted provided:

(1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.

(2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)"

(United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 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 application for a permit to construct and from such review shall, within ninety days of the receipt of the completed application, make the following preliminary determinations:

a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will cause or contribute to a violation of any applicable ambient air quality standard. A new stationary source will be considered to cause or contribute to a violation of an ambient air quality standard when such source would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable ambient standard:

Contaminant	Averaging Time (hours)				
	Annual ($\mu g/m^3$)	24 ($\mu g/m^3$)	8 ($\mu g/m^3$)	3 ($\mu g/m^3$)	1 ($\mu g/m^3$)
SO_2	1.0	5		25	25
PM_{10}	1.0	5			
NO_2	1.0				25
CO			500		2000

b. Whether the proposed project will provide all necessary and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.

6. **Public participation - Final action on application.**

a. The following source categories are subject to the public participation procedures under this subsection:

(1) Those affected facilities designated under chapter 33-15-13.

(2) New sources that will be required to obtain a permit to operate under section 33-15-14-06.

(3) Modifications to an existing facility which will increase the potential to emit from the facility by the following amounts:

(a) One hundred tons [90.72 metric tons] per year or more of particulate matter, sulfur dioxide, nitrogen oxides, hydrogen sulfide, carbon monoxide, or volatile organic compounds;

(b) Ten tons [9.07 metric tons] per year or more of any contaminant listed under section 112(b) of the Federal Clean Air Act; or

(c) Twenty-five tons [22.68 metric tons] per year or more of any combination of contaminants listed under section 112(b) of the Federal Clean Air Act.

(4) Sources which the department has determined to have a major impact on air quality.

(5) Those for which a request for a public comment period has been received from the public.

(6) Sources for which a significant degree of public interest exists regarding air quality issues.

(7) Those sources which request a federally enforceable permit which limits their potential to emit.

b. With respect to the permit to construct application, the department shall:

(1) Within ninety days of receipt of a complete application, make a preliminary determination concerning issuance of a permit to construct.

(2) Within ninety days of the receipt of the complete application, make available in at least one location in the county or counties in which the proposed project is to be located, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.

(3) Publish notice to the public by prominent advertisement, within ninety days of the receipt of the complete application, in the region affected, of the opportunity for written comment

on the preliminary determinations. The public notice must include the proposed location of the source.

(4) Within ninety days of the receipt of the complete application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

(5) Within ninety days of receipt of a complete application, provide a copy of the proposed permit and all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.

(6) Allow thirty days for public comment.

(7) Consider all public comments properly received, in making the final decision on the application.

(8) Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.

(9) Take final action on the application within thirty days of the applicant's response to the public comments.

(10) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.

c. For those sources subject to the requirements of chapter 33-15-15, the public participation procedures under section 33-15-15-01.2 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 or b of subsection 5 in the affirmative, the department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.

9. **Permit to construct - Conditions.** The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:

   a. Sampling, testing, and monitoring of the facilities or the ambient air or both.

   b. Trial operation and performance testing.

   c. Prevention and abatement of nuisance conditions caused by operation of the facility.

   d. Recordkeeping and reporting.

   e. Compliance with applicable rules and regulations in accordance with a compliance schedule.

   f. Limitation on hours of operation, production rate, processing rate, or fuel usage when necessary to assure compliance with this article.

   The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. **Scope.**

   a. The issuance of a permit to construct for any source does not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting the source.

   b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the

projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

11. **Transfer of permit to construct.** To ensure the responsible owners or operators, or both, are identified, the holder of a permit to construct may not transfer such permit without prior approval of the department.

12. **[Reserved]**

13. **Exemptions.** A permit to construct is not required for the following stationary sources provided there is no federal requirement for a permit or approval for construction or operation.

    a. Maintenance, structural changes, or minor repair of process equipment, fuel burning equipment, control equipment, or incinerators which do not change capacity of such process equipment, fuel burning equipment, control equipment, or incinerators and which do not involve any change in the quality, nature, or quantity of emissions therefrom.

    b. Fossil fuel burning equipment, other than smokehouse generators, which meet all of the following criteria:

        (1) The heat input per unit does not exceed ten million British thermal units per hour.

        (2) The total aggregate heat input from all equipment does not exceed ten million British thermal units per hour.

        (3) The actual emissions, as defined in chapter 33-15-15, from all equipment do not exceed twenty-five tons [22.67 metric tons] per year of any air contaminant and the potential to emit any air contaminant for which an ambient air quality standard has been promulgated in chapter 33-15-02 is less than one hundred tons [90.68 metric tons] per year.

    c. (1) Any single internal combustion engine with less than five hundred brake horsepower, or multiple engines with a combined brake horsepower rating less than five hundred brake horsepower.

        (2) Any single internal combustion engine with a maximum rating of less than one thousand brake horsepower, or multiple engines with a combined brake horsepower rating of less than one thousand brake horsepower, and which operates a

total of five hundred hours or less in a rolling twelve-month period.

(3) 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 33-15-02-04.

(4) The exemptions listed in paragraphs 1, 2, and 3 do not apply to engines that are a utility unit as defined in section 33-15-21-08.1 or are subject to a standard under chapter 33-15-22.

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 33-15-12.

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 33-15-04-02.

m. Flares used to indicate some danger to the public.

n. Sources or alterations to a source which are of minor significance as determined by the department.

o. Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as defined in section 33-15-14-06.

14. **Performance and emission testing.**

a. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Such tests must be conducted under the owner's or operator's permit to construct, and such permit is subject to the faithful completion of the test in accordance with this article.

b. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to construct must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.

c. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.

d. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative, or from requiring the owner or operator to conduct any test at such time as the department may determine.

15. **Responsibility to comply.**

a. Possession of a permit to construct does not relieve any person of the responsibility to comply with this article.

b. The exemption of any stationary source from the requirements of a permit to construct by reason of inclusion in subsection 13 does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

16. **Portable sources.** Sources which are designated to be portable and which are not subject to the requirements of chapter 33-15-15 are exempt from requirements to obtain a permit to construct. The owner or operator shall submit an application for a permit to operate prior to initiating operations.

17. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted under subsection 13 shall register the source with the department within such time limits and on such forms as the department may prescribe.

18. **Extensions of time.** The department may extend any of the time periods specified in subsections 4, 5, and 6 upon notification of the applicant by the department.

19. **Amendment of permits.** The department may, when the public interest requires or when necessary to ensure the accuracy of the permit, modify any condition or information contained in the permit to construct. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, the department will provide:

    a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification, and the opportunity for a public hearing, upon request, as well as written public comment.

    b. A minimum of a thirty-day period for written public comment, with the opportunity for a public hearing during that thirty-day period, upon request.

    c. Consideration by the department of all comments received in its order for modification.

    The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective March 1, 1980; February 1, 1982; October 1, 1987; June 1, 1990; March 1, 1994; August 1, 1995; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

33-15-14-03. Minor source permit to operate.

1. **Permit to operate required.**

    a. Except as provided in subdivisions c and d, no person may operate or cause the routine operation of an installation or source designated in section 33-15-14-01 without applying for and

obtaining, in accordance with this section, a permit to operate. Application for a permit to operate a new installation or source must be made at least thirty days prior to startup of routine operation. Those sources that received a permit to construct under section 33-15-14-02, need only submit a thirty-day prior notice of proposed startup to satisfy the requirement to apply for a permit to operate under this subdivision.

b. No person may operate or cause the operation of an installation or source in violation of any permit to operate or any condition imposed upon a permit to operate or in violation of this article.

c. Sources that are subject to the title V permitting requirements of section 33-15-14-06 are exempt from the requirements of this section.

d. Sources that are exempt from the requirement to obtain a permit to construct under subsection 13 of section 33-15-14-02 are exempt from this section.

e. Sources which are subject to the title V permitting requirements in section 33-15-14-06 based solely on their potential to emit may apply for a federally enforceable minor source permit to operate which would limit their potential to emit to a level below the title V permit to operate applicability threshold.

f. Permits which are issued under this section which do not conform to the requirements of this section, including public participation under subdivision a of subsection 5 of section 33-15-14-03, and the requirements of any United States environmental protection agency regulations may be deemed not federally enforceable by the United States environmental protection agency.

g. General permits: The department may issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other minor source permits to operate 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. 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 minor source permit to operate. Without repeating the public participation procedures under subsection 5 of section 33-15-14-03, the department may grant a source's request for authorization to operate under a general permit.

2. **Application for permit to operate.**

a. Application for a permit to operate must be made by the owner or operator thereof on forms furnished by the department.

b. Each application for a permit to operate must be accompanied by such performance tests results, information, and records as may be required by the department to determine whether the requirements of this article will be met. Such information may also be required by the department at any time when the source is being operated to determine compliance with this article.

c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the operation of the installation or source in accordance with this article.

3. **Standards for granting permits to operate.** No permit to operate may be granted unless the applicant shows to the satisfaction of the department that the source is in compliance with this article.

4. **Performance testing.**

a. Before a permit to operate is granted, the applicant, if required by the department, shall conduct performance tests in accordance with methods and procedures required by this article or methods and procedures approved by the department. Such tests must be made at the expense of the applicant. The department may monitor such tests and may also conduct performance tests.

b. 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. Issuance of a minor source permit to operate is subject to the faithful completion of the test in accordance with this article.

c. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to operate 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.

d. 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.

e. 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.

5. **Action on applications.**

a. Public participation: This subdivision is applicable to only those sources which apply for a federally enforceable minor source permit to operate which limits their potential to emit an air contaminant. The department shall:

(1) Within ninety days of receipt of a complete application:

(a) Make a preliminary determination concerning issuance of the permit to operate.

(b) Make available in at least one location in the county or counties in which the source is located, a copy of the proposed permit and copies of or a summary of the information considered in developing the permit.

(c) Publish notice to the public by prominent advertisement, in the region affected, of the opportunity for written comment on the proposed permit. The public notice must include the proposed location of the source.

(d) Deliver a copy of the proposed permit and public notice to any state or federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions. For purposes of this subparagraph, lands will be considered to be significantly affected if the source is located within thirty-one and seven hundredths miles [50 kilometers] of such land.

(e) Provide a copy of the proposed permit, all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.

(2) Allow thirty days for public comment.

(3) Consider all public comments properly received, in making the final decision on the application.

(4) 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.

(5) Take final action on the application within thirty days of the applicant's response to the public comments.

(6) 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.

b. For those sources not subject to public participation under subdivision a, the department shall act within thirty days after receipt of an application for a permit to operate a new installation or source, and within thirty days after receipt of an application to operate an existing installation or source, and shall notify the applicant, in writing, of the approval, conditional approval, or denial of the application.

c. The department shall set forth in any notice of denial the reasons for denial. A denial must be without prejudice to the applicant's right to a hearing before the department or for filing a further application after revisions are made to meet objections specified as reasons for the denial.

6. **Permit to operate - Conditions.** The department may impose any reasonable conditions upon a permit to operate. All emission limitations, controls, and other requirements imposed by conditions on the permit to operate must be at least as stringent as any applicable limitation or requirement contained in this article. Permit to operate conditions may include:

a. Sampling, testing, and monitoring of the facilities or 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. Limits on the hours of operation of a source or its processing rate, fuel usage, or production rate when necessary to assure compliance with this article.

7. **Suspension or revocation of permit to operate.**

a. The department may suspend or revoke a permit to operate for violation of this article, violations of a permit condition, or failure to respond to a notice of violation or any order issued pursuant to this article.

b. Suspension or revocation of a permit to operate shall become final ten days after serving notice on the holder of the permit.

c. A permit to operate which has been revoked pursuant to this article must be surrendered forthwith to the department.

d. No person may operate or cause the operation of an installation or source if the department denies or revokes a permit to operate.

8. **Transfer of permit to operate.** The holder of a permit to operate may not transfer it without the prior approval of the department.

9. **Renewal of permit to operate.**

a. Every permit to operate issued by the department after February 9, 1976, shall become void upon the fifth anniversary of its issuance. Applications for renewal of such permits must be submitted ninety days prior to such anniversary date. The department shall approve or disapprove such application within ninety days. If a source submits a complete application for a permit renewal at least ninety days prior to the expiration date, the source's failure to have a minor source permit to operate is not a violation of this section until the department takes final action on the renewal application.

b. The department may amend permits issued prior to February 9, 1976, so as to provide for voidance upon the fifth anniversary of its issuance.

10. **[Reserved]**

11. **[Reserved]**

12. **Responsibility to comply.**

a. Possession of a minor source permit to operate does not relieve any person of the responsibility to comply with this article.

b. The exemption of any stationary source from the requirements to obtain a minor source permit to operate does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

13. **Portable sources.** Sources which are designed to be portable and which are operated at temporary jobsites across the state may not be

considered a new source by virtue of location changes. One application for a permit to operate any portable source may be filed in accordance with this chapter, and subsequent applications are not required for each temporary jobsite. The permit to operate issued by the department shall be conditioned by such specific requirements as the department deems appropriate to carry out the provisions of sections 33-15-01-07 and 33-15-01-15.

14. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted from the requirement to obtain a minor source permit to operate to register the source with the department within such time limits and on such forms as the department may prescribe.

15. **Extensions of time.** The department may extend any of the time periods specified in this section upon notification of the applicant by the department.

16. **Amendment of permits.** When the public interest requires or when necessary to ensure the accuracy of the permit, the department may modify any condition or information contained in a minor source permit to operate. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, or modify a condition which limits the potential to emit of a source which possesses a federally enforceable permit, 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.

    The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to

section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective February 1, 1982; October 1, 1987; March 1, 1994; August 1, 1995; June 1, 2001; March 1, 2003; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-03, 23-25-04.1, 23-25-04.2

33-15-14-04. Permit fees. Repealed effective March 1, 1994.

33-15-14-05. Common provisions applicable to both permit to construct and permit to operate. Repealed effective March 1, 1994.

33-15-14-06. Title V permit to operate.

1. **Definitions.** For purposes of this section:

   a. "Affected source" means any source that includes one or more affected units.

   b. "Affected state" means any state that is contiguous to North Dakota whose air quality may be affected by a source subject to a proposed title V permit, permit modification, or permit renewal or which is within fifty miles [80.47 kilometers] of the permitted source.

   c. "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under title 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). 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 33-15-23, 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.

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. Except that:

(1) Greenhouse gases, the air contaminant defined in 40 Code of Federal Regulations 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the greenhouse gases emissions are at a stationary source emitting or having the potential to emit one hundred thousand tons per year carbon dioxide equivalent emissions.

(2) The term tons per year carbon dioxide equivalent emissions shall represent an amount of greenhouse gases emitted, and shall be computed by multiplying the mass amount of

emissions (tons per year), for each of the six greenhouse gases in the contaminant greenhouse gases, by the gas's associated global warming potential published at 40 Code of Federal Regulations, part 98, subpart A, table A-1 - global warming potentials, and summing the resultant value for each to compute a tons per year carbon dioxide equivalent.

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 33-15-14-03.

(4) The following source categories are exempted from the obligation to obtain a permit under this section.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 60, subpart AAA - standards of performance for new residential wood heaters.

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61, subpart M - national emission standard for hazardous air pollutants for asbestos, section 61.145, standard for demolition and renovation.

c. For major sources, the department will include in the permit all applicable requirements for all relevant emissions units in the major source.

For any nonmajor source subject to the requirements of this section, the department will include in the permit all applicable requirements applicable to the emissions units that cause the source to be subject to this section.

d. Fugitive emissions from a source subject to the requirements of this section shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

3. **Scope.** Nothing within this section shall relieve the owner or operator of a source of the requirement to obtain a permit to construct under section 33-15-14-02 or to comply with any other applicable standard or requirement of this article.

4. **Permit applications.**

a. Duty to apply. For each title V source, the owner or operator shall submit a timely and complete permit application in accordance with this subdivision.

(1) Timely application.

(a) A timely application for a source applying for a title V permit for the first time is one that is submitted within one year of the source becoming subject to this section.

(b) Title V sources required to meet the requirements under section 112(g) of the Federal Clean Air Act, or to have a permit to construct under section 33-15-14-02, shall file a complete application to obtain the title V permit or permit revision within twelve months after commencing operation. Where an existing title V permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than eighteen months, prior to the date of permit expiration.

(2) Complete application. To be deemed complete, an application must provide all information required pursuant to subdivision c, except that applications for a permit revision need supply such information only if it is related to the proposed change. Information required under subdivision c must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with subdivision d. Unless the department determines that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in paragraph 3 of subdivision a of subsection 6. If, while processing an application that has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subdivision b of subsection 6, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant

submits any requested additional information by the deadline specified by the department.

(3) Confidential information. If a source has submitted information to the department under a claim of confidentiality, the source must also submit a copy of such information directly to the administrator of the United States environmental protection agency when directed to do so by the department.

b. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

c. Standard application form and required information. All applications for a title V permit to operate shall be made on forms supplied by the department. Information as described below for each emissions unit at a title V source shall be included in the application. Detailed information for emissions units or activities that have the potential to emit less than the following quantities of air contaminants (insignificant units or activities) need not be included in permit applications:

Particulate: 2 tons [1.81 metric tons] per year

Inhalable particulate: 2 tons [1.81 metric tons] per year

Sulfur dioxide: 2 tons [1.81 metric tons] per year

Hydrogen sulfide: 2 tons [1.81 metric tons] per year

Carbon monoxide: 2 tons [1.81 metric tons] per year

Nitrogen oxides: 2 tons [1.81 metric tons] per year

Ozone: 2 tons [1.81 metric tons] per year

Reduced sulfur compounds: 2 tons [1.81 metric tons] per year

Volatile organic compounds: 2 tons [1.81 metric tons]

All other regulated contaminants including those in section 112(b) of the Federal Clean Air Act: 0.5 tons [0.45 metric tons] per year.

Where a contaminant could be placed in more than one category, the smallest emission level applies.

However, for insignificant activities or emissions units, a list of such activities or units must be included in the application. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under section 33-15-23-04. The application, shall, as a minimum, include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including 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 33-15-18.

(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 of section 33-15-14-06 or to define permit terms and conditions implementing any alternative operating scenario under paragraph 9 of subdivision a of subsection 5 of section 33-15-14-06 or implementing paragraph 2 of subdivision b of subsection 6 of section 33-15-14-06, paragraph 3 of subdivision b of subsection 6 of section 33-15-14-06, paragraph 8 of subdivision a of subsection 5 of section 33-15-14-06, or paragraph 10 of subdivision a of subsection 5 of section 33-15-14-06. 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. Each title V permit to operate shall expire upon the fifth anniversary of its issuance.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

[1] All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including subsection 10 and any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Federal Clean Air Act. If more than one monitoring or testing requirement applies,

the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

[2] If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subparagraph c. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this item; and

[3] As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, if applicable, the following:

[1] Records of required monitoring information that include the following:

[a] The date, place as defined in the permit, and time of sampling or measurements;

[b] The dates analyses were performed;

[c] The company or entity that performed the analyses;

[d] The analytical techniques or methods used;

[e] The results of such analyses; and

[f] The operating conditions as existing at the time of sampling or measurement;

[2] Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

[1] Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subdivision d of subsection 4.

[2] Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The department shall define "prompt" in the permit consistent with chapter 33-15-01 and the applicable requirements.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Federal Clean Air Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to title IV of the Federal Clean Air Act, or the regulations promulgated thereunder, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Federal Clean Air Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(a) The permittee must comply with all conditions of the title V permit. Any permit noncompliance constitutes a violation of the Federal Clean Air Act and this article and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee must furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee must also furnish such records directly to the administrator of the United States environmental protection agency along with a claim of confidentiality.

(7) A provision to ensure that the source pays fees to the department consistent with the fee schedule in chapter 33-15-23.

(8) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan.

(9) Terms and conditions for reasonably anticipated 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;

[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 33-15-01-13 when a threat to health and welfare would exist.

6. **Permit issuance, renewal, reopenings, and revisions.**

a. Action on application.

(1) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(a) The department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subdivision d of subsection 5;

(b) Except for modifications qualifying for minor permit modification procedures under paragraphs 1 and 2 of subdivision e, the department has complied with the requirements for public participation under subdivision h;

(c) The department has complied with the requirements for notifying and responding to affected states under subdivision b of subsection 7;

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this section; and

(e) The administrator of the United States environmental protection agency has received a copy of the proposed permit and any notices required under subdivisions a and b of subsection 7, and has not objected to issuance of the permit under subdivision c of subsection 7 within the time period specified therein.

(2) Except for applications received during the initial transitional period described in 40 CFR 70.4(b)(11) or under regulations

promulgated under title IV or title V of the Federal Clean Air Act for the permitting of affected sources under the acid rain program, the department shall take final action on each permit application, including a request for permit modification or renewal, within eighteen months after receiving a complete application.

(3) The department shall provide notice to the applicant of whether the application is complete. Unless the department requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through the minor permit modification procedures, in paragraphs 1 and 2 of subdivision e, a completeness determination is not required.

(4) The department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The department shall send this statement to the United States environmental protection agency and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have a permit to construct under section 33-15-14-02.

b. Requirement for a permit.

(1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date

of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.

(2) A permit revision is not required for section 502(b)(10) changes provided:

(a) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or title I of the Federal Clean Air Act.

(b) The changes do not exceed the emissions allowable under the title V permit whether expressed therein as a rate of emissions or in terms of total emissions.

(c) A permit to construct under section 33-15-14-02 has been issued, if required.

(d) The facility provides the department and the administrator of the United States environmental protection agency with written notification at least seven days in advance of the proposed change. The written notification shall include a description of each change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

(3) A permit revision is not required for changes that are not addressed or prohibited by the permit provided:

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) The source must provide contemporaneous written notice to the department and the administrator of the United States environmental protection agency of each such change, except for changes that qualify as insignificant under the provisions of subdivision c of subsection 4. Such written notice shall describe each such change, including the date, any change in emissions, contaminants emitted, and any applicable requirement that would apply as a result of the change.

(c) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air contaminant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(d) The changes are not subject to any requirements under title IV of the Federal Clean Air Act.

(e) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act.

(f) A permit to construct under section 33-15-14-02 has been issued, if required.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

c. Permit renewal and expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and the United States environmental protection agency review, that apply to initial permit issuance; and

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subdivision b of subsection 6 and subparagraph c of paragraph 1 of subdivision a of subsection 4.

d. Administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source if the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department;

(e) Incorporates into the title V permit the requirements from a permit to construct, provided that the permit to construct review procedure is substantially equivalent to the requirements of subsections 6 and 7 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in subsection 5; or

(f) Incorporates any other type of change which the administrator of the United States environmental protection agency has approved as being an administrative permit amendment as part of the approved title V operating permit program.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the department consistent with the following:

(a) The department shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this subdivision.

(b) The department shall submit a copy of the revised permit to the administrator of the United States environmental protection agency.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request provided a permit to construct under section 33-15-14-02 has been issued, if required.

(4) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in subdivision f of subsection 5 for administrative permit amendments made pursuant to subparagraph e of paragraph 1 of subdivision d which meet the relevant requirements of subsections 5, 6, and 7 for significant permit modifications.

e. Permit modification. A permit modification is any revision to a title V permit that cannot be accomplished under the provisions for administrative permit amendments under subdivision d. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(1) Minor permit modification procedures.

(a) Criteria.

[1] Minor permit modification procedures may be used only for those permit modifications that:

[a] Do not violate any applicable requirement;

[b] Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

[c] Do not require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

[d] Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the Federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations

promulgated under section 112(i)(5) of the Federal Clean Air Act;

[e] Are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act; and

[f] Are not required to be processed as a significant modification.

[2] Notwithstanding item 1 and subparagraph a of paragraph 2 of subdivision e, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan, or in applicable requirements promulgated by the United States environmental protection agency.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

[2] The source's suggested draft permit;

[3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

[4] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. Within five working days of receipt of a complete permit modification application,

the department shall notify the administrator of the United States environmental protection agency and affected states of the requested permit modification. The department shall promptly send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The department may not issue a final permit modification until after the United States environmental protection agency forty-five-day review period or until the United States environmental protection agency has notified the department that the United States environmental protection agency will not object to issuance of the permit modification, whichever is first, although the department can approve the permit modification prior to that time. Within ninety days of the department's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later, the department shall:

[1] Issue the permit modification as proposed;

[2] Deny the permit modification application;

[3] Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

[4] Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by subdivision a of subsection 7.

(e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the department allows the source to make the proposed change prior to taking action specified in items 1, 2, and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed

permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(f) The permit shield under subdivision f of subsection 5 shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the department may modify the procedure outlined in paragraph 1 to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

[1] That meet the criteria for minor permit modification procedures under item 1 of subparagraph a of paragraph 1 of subdivision e; and

[2] That collectively are below the threshold level which is ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in subsection 1, or five tons [4.54 metric tons] per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

[2] The source's suggested draft permit.

[3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

[4] A list of the source's other pending applications awaiting group processing, and a determination of

whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under item 2 of subparagraph a of paragraph 2 of subdivision e.

[5] Certification, consistent with subdivision d of subsection 4, that the source has notified the United States environmental protection agency of the proposed modification. Such notification need only contain a brief description of the requested modification.

[6] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under item 2 of subparagraph a of paragraph 2 of subdivision e, whichever is earlier, the department shall meet its obligation under paragraph 1 of subdivision a of subsection 7 and paragraph 1 of subdivision b of subsection 7 to notify the administrator of the United States environmental protection agency and affected states of the requested permit modifications. The department shall send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision e within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.

(e) Source's ability to make change. The provisions of subparagraph e of paragraph 1 apply to modifications eligible for group processing.

(f) The permit shield under subdivision f of subsection 5 shall not extend to group processing of minor permit modifications.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this subsection that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of this section, including those for applications, public participation, review by affected states, and review by the United States environmental protection agency, as they apply to permit issuance and permit renewal. The department shall complete review of significant permit modifications within nine months after receipt of a complete application.

f. Reopening for cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) Additional applicable requirements under the Federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.

(b) Additional requirements, including excess emissions requirements, become applicable to an affected source under title IV of the Federal Clean Air Act or the regulations promulgated thereunder. Upon approval by

the administrator of the United States environmental protection agency, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The department or the United States environmental protection agency determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) The administrator of the United States environmental protection agency or the department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under paragraph 1 shall not be initiated before a notice of such intent is provided to the title V source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

g. Reopenings for cause by the United States environmental protection agency.

(1) If the administrator of the United States environmental protection agency finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subdivision f, within ninety days after receipt of such notification, the department shall forward to the United States environmental protection agency a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

(2) The administrator of the United States environmental protection agency will review the proposed determination from the department within ninety days of receipt.

(3) The department shall have ninety days from receipt of the United States environmental protection agency objection to resolve any objection that the United States environmental protection agency makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.

(4) If the department fails to submit a proposed determination or fails to resolve any objection, the administrator of the United States environmental protection agency will terminate, modify, or revoke and reissue the permit after taking the following actions:

(a) Providing at least thirty days' notice to the permittee in writing of the reasons for any such action.

(b) Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

h. Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be subject to procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(1) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice; to persons on a mailing list developed by the department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the department that are relevant to the permit decision; a brief description of the comment procedures required by this subsection; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled;

(3) The department shall provide such notice and opportunity for participation by affected states as is provided for by subsection 7;

(4) The department shall provide at least thirty days for public comment and shall give notice of any public hearing at least thirty days in advance of the hearing; and

(5) The department shall keep a record of the commenters and also of the issues raised during the public participation process. These records shall be available to the public.

7. **Permit review by the United States environmental protection agency and affected states.**

a. Transmission of information to the administrator.

(1) The department shall provide a copy of each permit application including any application for a permit modification (including the compliance plan), to the administrator of the United States environmental protection agency except that the applicant shall provide such information directly to the administrator of the United States environmental protection agency when directed to do so by the department. The department shall provide a copy of each proposed permit and each final title V permit to operate to the administrator of the United States environmental protection agency. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the United States environmental protection agency's national data base management system.

(2) The department may waive the requirements of paragraph 1 and paragraph 1 of subdivision b for any category of sources (including any class, type, or size within such category) other than major sources upon approval by the administrator of the United States environmental protection agency.

(3) The department shall keep these records for at least five years.

b. Review by affected states.

(1) The department shall give notice of each draft permit to any affected state on or before the time that the notice to the public under subdivision h of subsection 6 is given, except to the extent paragraphs 1 and 2 of subdivision e of subsection 6 require the timing of the notice to be different.

(2) As part of the submittal of the proposed permit to the administrator of the United States environmental protection agency (or as soon as possible after the submittal for minor permit modification procedures allowed under paragraphs 1 and 2 of subdivision e of subsection 6) the department shall notify the administrator of the United States environmental protection agency and any affected state in writing of any refusal by the department to accept all recommendations

for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this section.

c. United States environmental protection agency objection. No permit for which an application must be transmitted to the administrator of the United States environmental protection agency under subdivision a shall be issued if the administrator of the United States environmental protection agency objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.

d. Public petitions to the administrator of the United States environmental protection agency. If the administrator of the United States environmental protection agency does not object in writing under subdivision c, any person may petition the administrator of the United States environmental protection agency within sixty days after the expiration of the administrator's forty-five-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in subdivision h of subsection 6, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator of the United States environmental protection agency objects to the permit as a result of a petition filed under this subdivision, the department shall not issue the permit until the United States environmental protection agency's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five-day review period and prior to the United States environmental protection agency's objection. If the department has issued a permit prior to receipt of the United States environmental protection agency's objection under this subdivision, the department may thereafter issue only a revised permit that satisfies the United States environmental protection agency's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

e. Prohibition on default issuance. The department shall issue no title V permit to operate, including a permit renewal or modification, until affected states and the United States environmental protection agency have had an opportunity to review the proposed permit as required under this subsection.

8. **Judicial review of title V permit to operate decisions.**

   a. The applicant, any person who participated in the department's public participation process, and any other person who could obtain judicial review under North Dakota Century Code section 28-32-42 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 timeframes referenced in this section shall be appealable in accordance with North Dakota Century Code section 28-32-42 within thirty days after expiration of the applicable timeframes.

   c. In accordance with North Dakota Century Code chapter 28-32, the mechanisms outlined in this subsection shall be the exclusive means for judicial review of permit decisions referenced in this section.

   d. Solely for the purpose of obtaining judicial review in state court, final permit action shall include the failure of the department to take final action on an application for a permit, permit renewal, or permit revision within the timeframes referenced in this section.

   e. Failure to take final action within ninety days of receipt of an application requesting minor permit modification procedures (or one hundred eighty days for modifications subject to group processing requirements) shall be considered final action and subject to judicial review in state court.

9. **Enforcement.** The department may suspend, revoke, or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate which has been revoked or terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.

10. **Compliance assurance monitoring.** Except as noted below, title 40, Code of Federal Regulations, part 64 compliance assurance monitoring, as it exists on 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.

b. "Part 70 permit" means a title V permit to operate.

c. "Permitting authority" means the department.

History: Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998; March 1, 2003; February 1, 2005; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

33-15-14-07. Source exclusions from title V permit to operate requirements.

1. **Purpose.** The purpose of this section is to clarify which sources are minor sources with respect to section 33-15-14-06. The owner or operator of any source that would be classified as a major source under section 33-15-14-06 and which is not specifically excluded by this section shall comply with the requirements of section 33-15-14-06.

2. **Definitions.** For purposes of this section:

   a. "Bulk gasoline plant" means any bulk gasoline distribution facility that has a gasoline throughput less than or equal to twenty thousand gallons [75700 liters] per day and that receives gasoline by truck rather than by rail.

   b. "Coatings" means coatings plus diluents plus cleanup solvents.

   c. "Fountain solution additives" includes isopropyl alcohol, n-propyl alcohol, n-butanol, and alcohol substitutes.

   d. "Hazardous air contaminant" means any air contaminant listed pursuant to subsection 112(b) of the Federal Clean Air Act.

   e. "Refueling positions" means the number of vehicles that could be dispensing simultaneously at a gasoline service station.

3. **Applicability.**

   a. The owner or operator of the following stationary sources is not required to obtain a title V permit to operate under section 33-15-14-06 if the conditions of this section are met:

      (1) Gasoline service stations.

      (2) Gasoline bulk plants.

      (3) Coating sources.

(4) Printing, publishing, and packaging operations.

(5) Degreasers using volatile organic solvents.

(6) Hot mix asphalt plants.

b. Any facility obtaining coverage under this section must submit a notification in writing to the department within ninety days of publication of this section unless specifically exempted from this requirement in the applicable subdivision of this section. The notification must contain the following information:

(1) Facility name, location, and nature of business.

(2) A list of all the sources of air contaminants at the facility.

(3) The condition of this section which is applicable to the facility.

(4) Total material usage, source capacity, or throughput for the previous month or twelve months at the facility, in accordance with the subdivision that is applicable to the facility.

(5) A signed statement accepting the throughput or usage limitation.

c. Complying with the conditions of this section does not exempt the owner or operator of a facility from the obligation to apply for and obtain a permit to construct or a minor source permit to operate unless specifically exempted in section 33-15-14-02 or 33-15-14-03.

d. The owner or operator of any facility listed in subdivision a which has potential emissions that would classify it as a major source even after the conditions of this section are met, or are not able to comply with the applicable conditions, shall obtain a title V permit to operate or a minor source permit to operate which limits the potential to emit of the source to a level below the major source threshold.

e. Complying with the conditions of this section does not relieve the owner or operator of a source of the responsibility to comply with any other applicable requirements of this article.

f. If the facility deviates from any condition, limit, or requirement of this section, a report must be submitted to the department within thirty days of the deviation containing the following information:

(1) The facility's name and location.

(2) Applicable condition, limit, or requirement for the facility for which a deviation occurred.

(3) A summary of the records showing the deviation, accompanied by an explanation of the deviation.

(4) A plan of action to prevent future occurrences of any deviation at the facility.

g. All records required by this section must be maintained for a period of five years from the last date of entry. The records must be available for inspection or submittal to the department upon request. If a facility is limited by a material usage, capacity, or throughput based on a twelve-month rolling period, a log must be updated monthly to include the previous twelve months' total material usage, capacity, or throughput.

4. **Exclusion standards.**

a. Gasoline service stations. The owner or operator of sources where gasoline dispensing operations account for more than ninety percent of all emissions from the facility is not required to obtain a title V permit to operate if the following conditions are met:

(1) No vapor recovery is used:

(a) The source's total sales of gasoline must not exceed three hundred eighty thousand gallons [1438300 liters] per month in any calendar month. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.

(b) If the number of refueling positions is no more than seventeen at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.

(2) Stage I vapor recovery is used:

(a) The source's total sales of gasoline must not exceed six hundred thirty thousand gallons [2384800 liters] per month in any calendar year. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.

(b) If the number of refueling positions is no more than twenty-nine at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.

b. Gasoline bulk plants. The owner or operator of gasoline bulk plants where gasoline loading and unloading operations account for more than ninety percent of all emissions from the source are covered by this subdivision. To demonstrate compliance with the twenty thousand gallons [75700 liters] per day of gasoline definition of a bulk plant, monthly records of throughput must be maintained at the source.

c. Coating sources.

(1) The owner or operator of sources where surface coating operations account for more than ninety percent of all hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in subparagraph a or b are met.

(a) The source's total usage of surface coatings must not exceed two hundred fifty gallons [946.25 liters] of coatings per month in any calendar month nor exceed three thousand gallons [11355 liters] of coatings per twelve-month period. The coatings are limited to six pounds per gallon [719 grams per liter] of any individual hazardous air contaminant. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The source's total hazardous air contaminant emissions shall not exceed ten tons per twelve-month period. Hazardous air contaminant emissions must be calculated by multiplying the surface coating material usage in gallons by the individual hazardous air contaminant content in pounds per gallon. To demonstrate compliance with the emissions limitation, the emissions must be calculated on a monthly basis and recorded in a log. All records of material usage, hazardous air contaminant content, and emissions must be maintained at the facility.

(2) The owner or operator of an automobile refinishing shop where operations account for more than ninety percent of volatile organic compound emissions and hazardous air contaminant emissions is not required to obtain a title V permit to operate if the usage of coatings is less than two hundred fifty gallons [946.25 liters] per month or three thousand gallons [11355 liters] of coatings per twelve-month period. This item does not apply to facilities capable of refinishing vehicles other than automobiles or trucks. Sources are exempt from the notification requirements under subdivision b of subsection 3 if:

(a) The auto refinishing shop business is entirely, or almost entirely, for collision repairs and the business has two or fewer bays;

(b) Substantial portions of the auto refinishing shop business are devoted to repainting entire vehicles and the business only has one bay devoted to painting; or

(c) The auto refinishing shop business does not have the physical or operational capability to do more than fifty jobs per week.

d. Printing, publishing, and packaging operations.

(1) The owner or operator of facilities where sheetfed (nonheatset) offset lithography or nonheatset web offset lithography printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.

(a) The facility must use less than fourteen thousand two hundred seventy-five gallons [54030 liters] of cleaning solvent and fountain solution additives in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(2) The owner or operator of facilities where heatset web offset lithography printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.

(a) The facility must use less than one hundred thousand pounds [45.36 megagrams] of ink, cleaning solvent, and fountain solution additives in any twelve-month

rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(3) The owner or operator of facilities where screen printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.

(a) The facility must use less than fourteen thousand two hundred seventy-five gallons [54030 liters] of the sum of solvent-based inks, cleaning solvents, adhesives, and coatings in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(4) The owner or operator of facilities, where flexography, or rotogravure printing operations with water-based or ultraviolet-cured inks, coatings, and adhesives are

conducted, is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.

(a) The facility must use less than four hundred thousand pounds [181 megagrams] of the sum of solvent-based inks, cleaning solvents, and adhesives in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(5) The owner or operator of facilities where flexography or rotogravure printing operations with solvent inks are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.

(a) The facility must use less than one hundred thousand pounds [45.36 megagrams] of the sum of ink, coatings, adhesives, dilution solvents, and cleaning solvents in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

e. Degreasers using volatile organic solvents. The owner or operator of facilities where degreasing operations account for more than ninety percent of all volatile organic compound emissions and hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in paragraph 1 or 2 are met.

(1) If non-halogenated solvents are used, the usage is limited to two thousand two hundred gallons [8327 liters] of any one solvent-containing material and five thousand four hundred gallons [20439 liters] of any combination of solvent-containing materials in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.

(2) If halogenated solvents are used, including methyl chloroform, trichloroethane, and methylene chloride, the usage is limited to one thousand two hundred gallons [4542 liters] of any one solvent-containing material and two thousand nine hundred gallons [10976 liters] of any combination of solvent-containing materials in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.

f. Hot mix asphalt plants. The owner or operator of facilities where hot mix asphalt production operations account for more than ninety percent of all emissions from the facility is not required to obtain a title V permit to operate if the amount of hot mix asphalt produced does not exceed two hundred fifty thousand tons [226757 metric tons] in any twelve-month rolling period. To demonstrate compliance with this limit, monthly records of hot mix asphalt produced must be maintained at the facility. Sources that are excluded under this subdivision must obtain a minor source permit to operate under section 33-15-14-03.

History: Effective June 1, 2001.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

CHAPTER 33-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Section	
33-15-15-01	General Provisions [Repealed]
33-15-15-01.1	Purpose
33-15-15-01.2	Scope
33-15-15-02	Reclassification

33-15-15-01. General provisions. Repealed effective February 1, 2005.

33-15-15-01.1. Purpose. The purpose of this chapter is to adopt by reference federal provisions for the prevention of significant deterioration program in North Dakota. The department will continue to implement the prevention of significant deterioration program as part of the state implementation plan.

History: Effective February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa), and (bb) as they exist on July 2, 2010, 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:

(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 33-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term "40 CFR 52.21" is replaced with "this chapter".

40 CFR 52.21(b)(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)(14)	The following is added: (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.
40 CFR 52.21(b)(15)	The following is added: (iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of region no. 130, the metropolitan Fargo-Moorhead interstate air quality control region; and region no. 172, the North Dakota intrastate air quality control region (the remaining fifty-two counties).
40 CFR 52.21(b)(22)	The following is added: Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
40 CFR 52.21(b)(29)	The following is added: This term does not include effects on integral vistas.
40 CFR 52.21(b)(30)	The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".
40 CFR 52.21(b)(43)	The paragraph is deleted in its entirety and replaced with the following:

	Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the United States environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.
40 CFR 52.21(b)(48)(ii)	The following words are deleted: "by the administrator for a permit required under this section or".
40 CFR 52.21(b)(49)	The following words are deleted "administrator in subchapter C of this chapter" and 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)(49)(i)	"§ 86.181-12(a) of this chapter" is deleted and replaced with: 40 CFR 86.1818-12(a).
40 CFR 52.21(b)(49)(ii)(a)	"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.
40 CFR 52.21(b)(51)	The paragraph is deleted in its entirety and replaced with the following: Reviewing authority means the department.
40 CFR 52.21(b)(50)(i)(c)	This paragraph is deleted in its entirety and replaced with the following: Nitrogen oxides are a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.
40 CFR 52.21(b)(50)(i)(d)	This paragraph is deleted in its entirety and replaced with the following: Volatile organic compounds are not a precursor to $PM_{2.5}$ in any attainment or unclassifiable areas.
40 CFR 52.21(b)(53)	This paragraph is deleted in its entirety and replaced with the following: Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.
40 CFR 52.21(b)(54)	This paragraph is deleted in its entirety and replaced with the following: Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.

40 CFR 52.21(b)(58) This paragraph is deleted in its entirety.

40 CFR 52.21(d) The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed the ambient air quality standards in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States.

40 CFR 52.21(e) The following is added:

(5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.

40 CFR 52.21(h) The paragraph is deleted and replaced with the following:

The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.

40 CFR 52.21(i) The following subparagraphs are added:

(11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.

(12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

40 CFR 52.21(k)(1) This subparagraph is deleted and replaced with the following:

(1) Any ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or

40 CFR 52.21(l)(1) This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix w of 40 CFR 51 ("guideline on air quality models" as it exists on July 2, 2010) as supplemented by the "North Dakota guideline for air quality modeling analyses". These documents are incorporated by reference. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.

40 CFR 52.21(m)(3)	"Appendix B to part 58 of this chapter" is replaced with 40 CFR 58, appendix B.
40 CFR 52.21(p)(6)	"paragraph (q)(4)" is replaced with "paragraph (p)(4)" and "(q)(7)" is replaced with "(p)(7)".
40 CFR 52.21(p)(7)	"paragraph (q)(7)" is replaced with "paragraph (p)(7)".
40 CFR 52.21(p)(8)	"paragraphs (q)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)".
40 CFR 52.21(p)	The following is added:

(9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.

40 CFR 52.21(q) This paragraph is deleted and replaced with the following:

q. Public participation.

(1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of

such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.

(2) 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, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.

(c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least thirty days for public comment.

(d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.

(e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would

be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

(f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than 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 ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or

40 CFR 52.21(w)(1) This subparagraph is deleted and replaced with the following:

(1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

40 CFR 52.21(aa)(15) This paragraph is deleted in its entirety

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History: Effective February 1, 2005; amended effective April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-02. Reclassification.

1. **Reclassification of areas.** All areas (except as otherwise provided under 40 CFR 52.21(e)) must be designated either class I, class II, or class III. Any designation other than class II is subject to the redesignation procedures of this section. Redesignation (except as otherwise precluded by 40 CFR 52.21(e)) is subject to approval by the administrator of the United States environmental protection agency.

a. Reclassification by petition.

(1) Filing of petition. After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition

for reclassification only if such reclassification is substantially supported by the hearing record.

(2) Contents of petition. The petition to reclassify any area to either class I, class II, or class III must contain a legal description of the area which the petition is to affect; an explanation of the meaning and purpose of the petition and reclassification; a statement to the effect that those persons signing the petition desire the described area to be reclassified to either class I, class II, or class III and such statement must specify which class; a list of those persons or person circulating such petition, which persons must be designated "Committee of Petitioners"; an affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated such petition and that each of the signatures to such petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated; all petitions' signatures must be numbered and dated by month, day, and year, and the name must be written with residence address and post-office address including the county of residence followed by state of North Dakota.

b. Reclassification upon department's own motion. At such time as the department may determine, it may hold a public hearing and take such other action as specified in subsection 2 in order to reclassify any area of this state (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III. The department shall reclassify the area proposed for reclassification only if such reclassification is substantially supported by the hearing record.

2. **Procedures for reclassification.**

a. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to either class I or class II pursuant to subdivisions a and b of subsection 1, provided that:

(1) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with the procedures established in subsection 3.

(2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation are notified at least thirty days prior to the public hearing.

(3) A discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation is prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion.

(4) Prior to the issuance of notice respecting the redesignation of any area that includes any federal lands, the state shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty days) to confer with the state respecting the redesignation and to submit written comments and recommendations with respect to such redesignation. In redesignating any area with respect to which any federal land manager has submitted written comments and recommendations, the state shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager).

(5) The proposed redesignation is based on the record of the state's hearing, which must reflect the basis for the proposed redesignation, including consideration of:

(a) Growth anticipated in the area.

(b) The social, environmental, health, energy, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and states.

(c) Any impacts of such proposed redesignation upon regional or national interests. Anticipated growth shall include growth resulting both directly and indirectly from proposed development.

(6) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

b. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to class III if:

(1) Such redesignation would meet the requirements of subdivision a.

(2) Such redesignation has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislative assembly if it is in session or with the leadership of the legislative assembly if it is not in session, and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation or pass resolutions concurring the state's redesignation.

(3) Such redesignation will not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area, or any applicable ambient air quality standard.

(4) Prior to any public hearing on redesignation of any area, there must be available, insofar as is practicable for public inspection, any specific plans for any new major stationary source or major modification which may be permitted to be constructed and operated only if the area in question is redesignated as class III.

3. **Reclassification hearings.**

a. Any hearing required by subsection 2 shall be held only after reasonable notice, which shall be considered to include, at least thirty days prior to the date of such hearing:

(1) Notice given to the public by prominent advertisement in the region affected announcing the date, time, and place of such hearing.

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.

(3) Notification to the administrator of the United States environmental protection agency (through the appropriate regional office).

(4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply.

(5) In the case of an interstate region, notification to any other states included, in whole or in part, in the region.

(6) Notification to any states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation.

b. The department shall prepare and retain for inspection a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

c. Any hearing held pursuant to the provisions of this subsection must be held only for the purpose of considering such reclassification as has been noticed under the provisions of subsection 2, and consideration of reclassification to other classes not so noticed shall not be allowed.

d. Any hearing held pursuant to these provisions may be continued for such purposes and for such periods of time as the department may determine.

4. **Time limitation.** Notwithstanding any other regulation herein, the department shall rule upon any proposed reclassification within eighteen months of the official public notification of such proposed redesignation by the department.

History: Amended effective July 1, 1982; October 1, 1987; January 1, 1989; February 1, 2005.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-17
RESTRICTION OF FUGITIVE EMISSIONS

Section	
33-15-17-01	General Provisions - Applicability and Designation of Affected Facilities
33-15-17-02	Restriction of Fugitive Particulate Emissions
33-15-17-03	Reasonable Precautions for Abating and Preventing Fugitive Particulate Emissions
33-15-17-04	Restriction of Fugitive Gaseous Emissions

33-15-17-01. General provisions - Applicability and designation of affected facilities.

1. The provisions of this chapter apply to the owner or operator of any source of fugitive emissions whatsoever.

2. No person shall cause or permit fugitive emissions from any source whatsoever, including a building, its appurtenances, or a road, to be used, constructed, altered, repaired, or demolished; or activities such as loading, unloading, storing, handling, or transporting of materials without taking reasonable precautions to prevent such emissions from causing air pollution as defined in section 33-15-01-04.

History: Amended effective January 1, 1996; June 1, 2001.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-17-02. Restriction of fugitive particulate emissions. No person shall emit or cause to be emitted into the ambient air from any source of fugitive emissions as specified in section 33-15-17-01 any particulate matter which:

1. [Reserved]

2. Exceed the ambient air quality standards of chapter 33-15-02 at or beyond the property line of the source.

3. Exceed the prevention of significant deterioration of air quality increments of chapter 33-15-15 at or beyond the property line of the source for sources subject to chapter 33-15-15.

4. Exceed the restrictions on the emission of visible air contaminants of chapter 33-15-03, at or beyond the property line of the source.

5. Would have an adverse impact on visibility, as defined in chapter 33-15-19, on any class I federal area.

6. Agricultural activities related to the normal operations of a farm shall be exempt from the requirements of this section. However, agricultural

practices such as tilling of land, application of fertilizers, and the harvesting of crops shall be managed in such a manner as to minimize dust from becoming airborne.

History: Amended effective January 1, 1996; January 1, 2007.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-17-03. Reasonable precautions for abating and preventing fugitive particulate emissions.

1. Unpaved roads and unpaved parking areas. Abatement and preventive measures include but shall not be limited to frequent watering, addition of dust palliatives, detouring, paving, closure, speed control, or other means such as surface treatment with penetration chemicals (ligninsulfonates, oil, water, cutbacks, etc.) or methods of equal or greater effectiveness in reducing the air contamination produced.

2. Demolition, wrecking and explosive detonation activities; earth and construction material moving, mining, and excavation activities.

   a. Abatement and preventive fugitive particulate control measures include, but are not limited to:

      (1) Wetting down, including prewatering.

      (2) Landscaping and replanting with native vegetation.

      (3) Covering, shielding or enclosing the area.

      (4) Paving, temporary or permanent.

      (5) Treating, the use of dust palliatives and chemical stabilization.

      (6) Detouring.

      (7) Restricting the speed of vehicles on sites.

      (8) Preventing the deposit of dirt and mud on improved streets and roads.

      (9) Minimizing topsoil disturbance and reclaiming as soon as possible.

   b. Sequential blasting be employed whenever or wherever feasible to reduce the amounts of particulate matter.

c. Such dust control strategies as revegetation, delay of topsoil disturbance until necessary, or surface compaction and sealing, be applied.

d. Haulage equipment be washed or wetted down, treated, or covered when necessary to minimize the amount of dust becoming airborne in transit and in loading.

e. Stockpile of materials be treated to prevent blowing or the material be contained in silos or other suitable enclosures.

f. Waste disposal sites be so operated and constructed as to prevent particulate matter from becoming airborne.

g. All conveyors, transfer points, crushers, screens, and dryers be so constructed, protected, or treated as to prevent particulate matter from becoming airborne.

h. These measures also be used during periods when actual construction work is not being conducted, such as on weekends and holidays.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-17-04. Restriction of fugitive gaseous emissions. No person shall emit or cause to be emitted into the ambient air from any source of fugitive emissions as specified in section 33-15-17-01 any gases which:

1. Exceed the ambient air quality standards of chapter 33-15-02 at or beyond the property line of the source.

2. Exceed the prevention of significant deterioration of air quality increments of chapter 33-15-15 at or beyond the property line of the source for sources subject to chapter 33-15-15.

3. Exceed the emission restrictions for odorous substances of chapter 33-15-16 at or beyond the property line of the source.

4. Exceed the restrictions on the emission of visible air contaminants of chapter 33-15-03 at or beyond the property line of the source.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-18
STACK HEIGHTS

Section	
33-15-18-01	General Provisions
33-15-18-02	Good Engineering Practice Demonstrations
33-15-18-03	Exemptions

33-15-18-01. General provisions.

1. The degree of emission limitation required of any source for control of any air contaminant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in section 33-15-18-03.

2. Definitions. As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04 or in North Dakota Century Code chapter 23-25.

   a. "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical onsite construction of the stack; or (2) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

   b. (1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

      (a) Using that portion of a stack which exceeds good engineering practice stack height;

      (b) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

      (c) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

   (2) The preceding sentence does not include:

      (a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning

the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(b) The merging of exhaust gas streams where:

[1] The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

[2] After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

[3] Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source.

(c) Smoke management in prescribed agricultural or silvicultural burning programs;

(d) Episodic restrictions on residential woodburning and open burning; or

(e) Techniques under subparagraph c of paragraph 1 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed five thousand tons per year.

c. "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under paragraph 3 of subdivision d and means:

(1) For sources seeking credit for stack height exceeding that established under paragraph 2 of subdivision d, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to chapter 33-15-15, prevention of significant deterioration of air quality, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part must be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the department, an alternative emission rate must be established in consultation with the source owner or operator;

(2) For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under paragraph 2 of subdivision d, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in paragraph 1, except that the emission rate specified by the department (or, in the absence of such a limit, the actual emission rate) shall be used; or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the department; and

(3) For sources seeking credit after January 12, 1979, for a stack height determined under paragraph 2 of subdivision d where the department requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources

seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in paragraph 2 of subdivision d, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least forty percent in excess of the maximum concentration experience in the absence of such downwash, wakes, or eddy effects.

d. "Good engineering practice" (GEP) stack height means the greater of:

(1) Sixty-five meters [213.25 feet], measured from the ground-level elevation at the base of the stack;

(2) (a) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required by article 33-15, air pollution control,

$H_g = 2.5H$, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation.

(b) For all other stacks,

$H_g = H + 1.5L$,

where:

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structures measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structures, provided that the department may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the environmental protection agency, state or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air contaminant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

e. "Nearby" as used in subdivision d is defined for a specific structure or terrain feature and:

(1) For purposes of applying the formulae provided in paragraph 2 of subdivision d means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometers [1/2 mile]; and

(2) For conducting demonstrations under paragraph 3 of subdivision d means not greater than 0.8 kilometers [1/2 mile], except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height (H_t) of the feature not to exceed two miles [3.22 kilometers] if such feature achieves a height (H_t) 0.8 kilometers [1/2 mile] from the stack that is at least forty percent of the good engineering practice stack height determined by the formulae provided in subparagraph b of paragraph 2 of subdivision d or twenty-six meters [85.30 feet], whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

f. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

History: Effective October 1, 1987.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-18-02. Good engineering practice demonstrations. Before a new or revised emission limitation is approved that is based on a good engineering practice stack height that exceeds the height allowed by paragraph a or b of subdivision d of subsection 2 of section 33-15-18-01, the department shall notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. In no event may the department prohibit any increase in stack height or restrict the stack height of any source.

History: Effective October 1, 1987.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-18-03. Exemptions. The provisions of this chapter do not apply to stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed,

or reconstructed, or for which major modifications, were carried out after December 31, 1970.

History: Effective October 1, 1987.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-19
VISIBILITY PROTECTION

Section	
33-15-19-01	General Provisions
33-15-19-02	Review of New Major Stationary Sources and Major Modifications
33-15-19-03	Visibility Monitoring

33-15-19-01. 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 33-15-15-01, whose construction or modification is commenced after August 12, 1985. The standards shall be applied in conjunction with the procedures set forth in chapters 33-15-12, 33-15-14, and 33-15-15.

2. **Definitions.** As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04, 33-15-12-01, or 33-15-15-01 or in North Dakota Century Code chapter 23-25.

   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 October 1, 1987.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-19-02. Review of new major stationary sources and major modifications.

1. **Visibility impact analysis.** The owner or operator of a major stationary source or major modification, subject to subsection 1 of section 33-15-19-01, shall demonstrate to the department that

the actual emissions from the major stationary source or major modification, including fugitive emissions, will not cause or contribute to adverse impact on visibility within any federal class I area. The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to support any analysis or determination made. The owner or operator of a proposed major stationary source or major modification, subject to the requirements of this subsection, shall provide a visibility impact analysis of the visibility impact likely to occur as a result of general commercial, residential, industrial, and other growth associated with the source or major modification.

2. **Visibility models.** All estimates of visibility impact required under this section must be based on those models contained in "Workbook for Estimating Visibility Impairment" (EPA-450/4-80-031, November 1980). Equivalent models may be used subject to prior approval by the department.

3. **Notification of permit application.** The department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification must include a copy of all information relevant to the permit application and must be given within thirty days of receipt and at least sixty days prior to any public hearing on the application for a permit to construct. Such notification must include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination of anticipated impacts on visibility in any federal class I area, and shall make available to them any materials used in making that determination, promptly after the department makes such determination. The department shall also notify all affected federal land manager's within thirty days of receipt of any advance notification of any such permit application.

4. **Federal land manager review.** The department shall consider any analysis performed by the federal land manager, provided within thirty days of the notification required by subsection 3 of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the department finds that such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result in the federal class I area, the department will, in the notice of opportunity for public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

5. **Permits.** No source subject to this chapter may be issued a permit to construct if the department determines that an adverse impact on visibility in any federal class I area will occur because of the proposed source or major modification.

6. **Public participation.** Where a permit application has been filed for a source subject to the provisions of this chapter, the public must be given an opportunity for review of the permit application and the department's determination as described in subsection 5 of section 33-15-15-01.

History: Effective October 1, 1987.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-19-03. Visibility monitoring. The department may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the department deems necessary and appropriate. This can include preconstruction, concurrent with construction, or postconstruction monitoring or any combination thereof.

The department shall provide its proposed requirements for visibility monitoring by the owner or operator to the federal land manager prior to issuing a permit to construct. The department shall consider the federal land manager's comments on the proposed monitoring in any final determinations to be placed on a permit to construct or permit to operate, or both.

History: Effective October 1, 1987.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-20
CONTROL OF EMISSIONS FROM OIL AND GAS WELL PRODUCTION FACILITIES

Section	
33-15-20-01	General Provisions
33-15-20-02	Registration and Reporting Requirements
33-15-20-03	Prevention of Significant Deterioration Applicability and Source Information Requirements
33-15-20-04	Requirements for Control of Production Facility Emissions

33-15-20-01. General provisions.

1. **Applicability.** The provisions of this chapter apply to any oil or gas well production facility which emits sulfur or sulfur compounds to the atmosphere.

2. **Definitions.** As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04 or in North Dakota Century Code chapter 23-25.

   a. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the North Dakota state industrial commission.

   b. "Completion" means an oil well must be considered completed when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run. A gas well must be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole must be considered complete when all North Dakota state industrial commission provisions of plugging are complied with.

   c. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

   d. "Continuous burning pilot" means a stable auxiliary flame supported by a reliable fuel source which is independent of wellhead production.

   e. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seven-tenths pounds per square inch [1034 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [15.5 degrees Celsius].

f. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota state industrial commission.

g. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.

h. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of specific gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

i. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the North Dakota state industrial commission.

j. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.

k. "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces.

l. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool.

m. "Production facility" means all equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines, and auxiliary nontransportation-related equipment used in the exploration, development, or subsequent production or handling of oil and gas from an oil or gas well or wells which are located on one or more contiguous or adjacent surface properties, and are under the control of the same person (or persons under common control).

n. "Recomplete" or "recompletion" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

o. "Reservoir" means pool or common source of supply.

History: Effective October 1, 1987; amended effective June 1, 1990; June 1,1992.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-20-02. Registration and reporting requirements.

1. The owner or operator of any oil or gas well that is completed or recompleted on or after July 1, 1987, shall submit an oil and gas well registration form available from the department, and an analysis of any gas produced from the well. The registration form and gas analysis must be submitted to the department within ninety days of the completion or recompletion of the well. The registration form must contain sufficient information to allow the department to determine if the oil or gas well and associated production facility is in compliance with all applicable sections of this chapter.

2. The owner or operator of any oil or gas well that has been completed or recompleted prior to July 1, 1987, and emits ten tons per year or more of sulfur (all sulfur compounds expressed as S) from any associated production facility shall submit an oil and gas well registration form available from the department, and an analysis of any gas produced from the well. The registration form must contain sufficient information to allow the department to determine if the oil or gas well and associated production facility is in compliance with all applicable sections of this chapter. The registration form and gas analysis must be submitted to the department by January 1, 1988, unless the emissions are the result of a modification or change that occurs after July 1, 1987. For wells that are subject to this subsection due to a modification or change which occurred after July 1, 1987, the registration form and gas analysis must be submitted within ninety days of the modification or change.

3. The owner or operator of any oil or gas well subject to this section shall inform the department of any change to the information contained on the registration form for a particular well and shall submit a new gas analysis if the composition or the volume of the gas produced from the well has changed from the previous analysis to cause an increase of ten tons per year or more of sulfur (all sulfur compounds expressed as S).

History: Effective October 1, 1987; amended effective June 1, 1990; June 1,1992.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-20-03. Prevention of significant deterioration applicability and source information requirements.

1. Any oil or gas well production facility that emits or has the potential to emit two hundred fifty tons per year or more of any air contaminant regulated under North Dakota Century Code chapter 23-25, as determined by the department, shall comply with the permitting requirements of chapter 33-15-15.

2. To determine prevention of significant deterioration of air quality (PSD) applicability for sulfur dioxide, the following formula must be used:

$$E = 0.00084\ R\ T\ (\%\ H_2S)$$

Where: E = sulfur dioxide emission rate (tons/yr).

R = the average daily amount of gas burned, incinerated and/or flared (thousand cubic feet per day-MCFD) based upon a thirty-day period. The thirty-day period must be the last thirty operating days of a one hundred eighty-day period following the completion or recompletion of a well. In cases where the well is shut in for extended periods during the one hundred eighty-day period following completion or recompletion, a case-by-case determination of PSD can be requested of the department.

T = days of operation per year (day/yr). This number must be three hundred sixty-five unless there are verifiable physical limitations or a federally enforceable permit that limits the number of operating days.

% H_2S = mole percent hydrogen sulfide content as determined by the most recent gas analysis.

The formula is derived as follows:

$$E = \left(\frac{Mcf}{day}\right)\left(\frac{1000\ cf}{Mcf}\right)\left(\frac{\%\ H_2S}{100}\right)\left(\frac{lb\text{-}mole}{379.5\ cf}\right)\left(\frac{64.06\ lb\ SO_2}{lb\text{-}mole}\right)\left(\frac{days}{year}\right)\left(\frac{ton}{2000\ lb}\right)$$

$$E = 0.00084\ \left(\frac{Mcf}{day}\right)\left(\frac{days\ of\ operation}{year}\right)(\%\ H_2S)$$

Emissions from all onsite equipment at the production facility must be included in the total annual emission determination.

3. The owner or operator of any oil or gas well production facility subject to subsection 1 of this section shall provide information to demonstrate that emissions from the facility do not significantly contribute to exceeding the ambient air quality standards, as defined in chapter 33-15-02, or class I or class II increments, as defined in chapter 33-15-15; and shall address other requirements as specified in chapter 33-15-15.

History: Effective October 1, 1987; amended effective June 1, 1990; June 1,1992.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-20-04. 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 (H_2S), must be equipped and operated with an automatic ignitor or a continuous burning pilot which must be maintained 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 (SO_2) necessary to meet the requirements of this article.

3. Any volatile organic compound gas or vapor may be subject to controls as specified in chapter 33-15-07.

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 (H_2S). 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 33-15-02, including, but not limited to, hydrogen sulfide and sulfur dioxide; the class I and class II increments for sulfur dioxide, nitrogen dioxide, and particulate matter of chapter 33-15-15, if applicable; the odor concentration limits of chapter 33-15-16; 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 33-15-01-13. 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 the revisions to section 33-15-20-04 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 33-15-20-04 shall comply with

the requirements of this chapter within ninety days of the completion of the well.

History: Effective October 1, 1987; amended effective June 1, 1990.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-21
ACID RAIN PROGRAM

Section	
33-15-21-01	General Provisions [Repealed]
33-15-21-02	Designated Representative [Repealed]
33-15-21-03	Acid Rain Applications [Repealed]
33-15-21-04	Acid Rain Compliance Plan and Compliance Options [Repealed]
33-15-21-05	Acid Rain Permit Contents [Repealed]
33-15-21-06	Acid Rain Permit Issuance Procedures [Repealed]
33-15-21-07	Permit Revisions [Repealed]
33-15-21-08	Compliance Certification [Repealed]
33-15-21-08.1	Permits
33-15-21-09	Continuous Emissions Monitoring
33-15-21-10	Acid Rain Nitrogen Oxides Emission Reduction Program
33-15-21-11	Sulfur Dioxide Opt-Ins [Reserved]

33-15-21-01. General provisions. Repealed effective June 1, 2001.

33-15-21-02. Designated representative. Repealed effective June 1, 2001.

33-15-21-03. Acid rain permit applications. Repealed effective June 1, 2001.

33-15-21-04. Acid rain compliance plan and compliance options. Repealed effective June 1, 2001.

33-15-21-05. Acid rain permit contents. Repealed effective June 1, 2001.

33-15-21-06. Acid rain permit issuance procedures. Repealed effective June 1, 2001.

33-15-21-07. Permit revisions. Repealed effective June 1, 2001.

33-15-21-08. Compliance certification. Repealed effective June 1, 2001.

33-15-21-08.1. Permits. The provisions of title 40, Code of Federal Regulations, part 72 and its appendices, as they exist on July 2, 2010, for purposes of implementing an acid rain program that meets the requirements of title IV of the federal Clean Air Act, are incorporated into this chapter by reference. The term "administrator" means the department except for those duties that cannot be delegated to the department. For those duties that cannot be delegated, "administrator" means the administrator of the United States environmental protection agency. If the provisions or requirements of title 40, Code of Federal

Regulations, part 72, conflict with or are not included in section 33-15-14-06, the provisions of part 72 shall apply and take precedence.

History: Effective June 1, 2001; amended effective March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03, 23-01-04.1
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-09. Continuous emissions monitoring.

1. **General.** The monitoring, recordkeeping, and reporting of sulfur dioxide, nitrogen oxides, and carbon dioxide emissions, volumetric flow, and opacity data from affected units under the acid rain program shall be conducted in accordance with title 40, Code of Federal Regulations, part 75. Title 40, Code of Federal Regulations, part 75 and its appendices, as they exist on July 2, 2010, are incorporated by reference.

2. **Exceptions.** Those portions of title 40, Code of Federal Regulations, part 75, that are controlled and administered completely by the United States environmental protection agency will not be enforced by the state. This should not be construed as precluding the United States environmental protection agency from exercising its statutory authority under the Clean Air Act, as amended, or an affected source from complying with the authority or the requirements of the federal acid rain program.

History: Effective December 1, 1994; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-10. Acid rain nitrogen oxides emission reduction program. Title 40, Code of Federal Regulations, part 76 and its appendices, as they exist on July 2, 2010, are incorporated into this chapter by reference.

History: Effective April 1, 1998; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-01-04.1, 23-25-03

33-15-21-11. Sulfur dioxide opt-ins. [Reserved]

CHAPTER 33-15-22
EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Section
33-15-22-01 Scope
33-15-22-02 Definition
33-15-22-03 Emissions Standards

33-15-22-01. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 63, as they exist on July 2, 2010, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-22-02. Definition. For the purposes of this chapter, "administrator" means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

History: Effective December 1, 1994; amended effective February 1, 2005.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-22-03. Emissions standards.

Subpart A - General provisions.

Subpart B - Requirements for control technology determinations for major sources in accordance with Federal Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emissions standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emissions standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emissions standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emissions standards for drycleaning facilities.

Subpart N - National emissions standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emissions standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emissions standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emissions standards for halogenated solvent cleaning.

Appendix A to subpart T - Test of solvent cleaning procedures.

Appendix B to subpart T - General provisions applicability to subpart T.

Subpart 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 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 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 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 GGGGG - National emission standards for hazardous air pollutants: site remediation.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (f_{bio}) in a biological treatment unit.

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

Authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-23
FEES

Section	
33-15-23-01	Definitions
33-15-23-02	Permit to Construct Fees
33-15-23-03	Minor Source Permit to Operate Fees
33-15-23-04	Major Source Permit to Operate Fees
33-15-23-05	Phase I Substitution Units

33-15-23-01. Definitions. For purposes of this chapter:

1. "Major source" means any source that has been issued or is required by this article to obtain a title V permit to operate. This includes sources that have begun operation but have not yet applied for a title V permit to operate.

2. "Minor source" has the meaning given to it in section 33-15-14-01.1.

3. "Regulated contaminant" means any "regulated air contaminant", as defined in section 33-15-14-06, except the following:

   a. Carbon monoxide.

   b. Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

   c. Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

History: Effective August 1, 1995; amended effective February 1, 2005.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-23-02. Permit to construct fees. Any person constructing, installing, or establishing a new stationary source or altering an existing source which requires a permit to construct under subsections 1 and 3 of section 33-15-14-02 is required to pay a permit to construct application filing fee and a permit to construct processing fee to the state department of health.

1. **Application fee.** A nonrefundable filing fee of one hundred fifty dollars must be submitted with the permit application.

2. **Processing fee.** The applicant shall pay a processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources which would involve a major analysis the cost of which would exceed one hundred fifty dollars as

determined by the department. The following procedures and criteria will be utilized in establishing the fee:

a. A record of all permit to construct application processing costs incurred must be maintained by the department.

b. Upon request, the department, in consultation with the applicant, will prepare an estimate of the processing fee and the billing schedule that will be utilized in processing the application. If the applicant chooses, the applicant may withdraw the application at this point without paying any processing fees.

c. After final determinations on the application have been made, a final statement will be sent to the applicant containing the remaining actual processing costs incurred by the department.

d. The applicant must pay the processing fee regardless of whether a permit to construct is issued, denied, or withdrawn.

e. Any source that initiates operation under a permit to construct prior to receiving a permit to operate is subject to the fees outlined in section 33-15-23-03 or 33-15-23-04, whichever is applicable.

History: Effective August 1, 1995.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-03, 23-25-04.2

33-15-23-03. Minor source permit to operate fees.

1. The owner or operator of each installation subject to a permit issued under section 33-15-14-03 shall pay an annual permit fee based on the following table:

Classification	Annual Fee ($)
Designated	300
Monitor (CEMS or Ambient Site)	600/CEMS or Site
Other	100
State and local government	0
Exempt	0

The following criteria are used to classify sources for determining minor source annual fees:

Designated:	A source that is designated for scheduled inspections.
Monitor:	A charge in addition to the annual fee for any source operating a continuous emission monitor system (CEMS) or an ambient monitoring site.
Other:	As designated by the department.
State and local government:	Any installation owned by the state of North Dakota or a local government.
Exempt:	As designated by the department.

2. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:

   a. Observation of source or performance specification testing, or both.

   b. Audits of source operated ambient air monitoring networks.

   An accounting of the actual costs incurred under this subsection must accompany the notice of the annual permit fee.

3. Annual emissions are derived using representative source test data, "compilation of air pollution emission factors (AP-42)" or other reliable data.

4. The classification of "other" and "exempt" shall be designated by the department on a case-by-case basis.

5. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.

History: Effective August 1, 1995; amended effective April 1, 2009.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-04.2

33-15-23-04. Major source permit to operate fees.

1. The owner or operator of each installation that meets the applicability requirements of subsection 2 of section 33-15-14-06 shall pay an annual fee. The fee is determined by the actual annual emissions of regulated contaminants. Fugitive emissions will be included in the fee calculation for sources that are required to count them when determining applicability under section 33-15-14-06.

2. Effective January 1, 2005, the annual fee shall be assessed at a rate of twenty-five dollars per ton of emissions of each regulated contaminant

identified in section 112(b) of the Federal Clean Air Act. All other regulated contaminants will be assessed a fee at a rate of twelve dollars per ton. The minimum fee will be five hundred dollars per source.

3. In determining the amount due, that portion of any regulated contaminant which is emitted in excess of four thousand tons [3628.74 metric tons] per year will be exempt from the fee calculation.

4. Each boiler with a heat input greater than two hundred fifty million British thermal units per hour will be assessed fees on an individual basis and independent of the fees associated with the rest of the installation. The four thousand ton [3628.74 metric ton] per year cap referenced in subsection 3 is applied to each boiler.

5. Any state-owned or local government-owned facility is exempt from the fee.

6. The fee calculation must be based upon actual annual emissions from the previous calendar year.

7. The fee must be calculated independently for each installation, facility, source, or unit which has been issued a separate permit to operate.

8. The fee rates and the limits established under subsection 2 may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year.

9. Any source issued a general permit under section 33-15-14-06 is subject to the minor source permit to operate fees under section 33-15-23-03.

10. Any source that qualifies as a "small business" under section 507 of the Federal Clean Air Act may petition the department to reduce or exempt any fee required under this section. Sufficient documentation of the petitioner's financial status must be submitted with the request to allow the department to evaluate the request.

11. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.

History: Effective August 1, 1995; amended effective February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-04.2

33-15-23-05. Phase I substitution units. Substitution units, as defined in 40 CFR part 72, shall pay an annual administrative fee equal to one hundred thousand dollars per source. This fee must be adjusted on an annual basis to account for any increase in the consumer price index. The adjustment shall be made on August thirty-first of each year and shall be based on the department of labor's published change in the index.

History: Effective August 1, 1995.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-04.2

CHAPTER 33-15-25
REGIONAL HAZE REQUIREMENTS

Section	
33-15-25-01	Definitions
33-15-25-02	Best Available Retrofit Technology
33-15-25-03	Guidelines for Best Available Retrofit Technology Determinations Under the Regional Haze Rule
33-15-25-04	Monitoring, Recordkeeping, and Reporting

33-15-25-01. Definitions. The definitions in title 40, Code of Federal Regulations, part 51, section 301, as they exist on October 1, 2005, are incorporated by reference into this chapter. For purposes of this chapter only:

1. "Boiler operating day" means any twenty-four-hour period between midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

2. "Contributes to visibility impairment" means a change in visibility impairment in a class I federal area of five-tenths deciviews or more (twenty-four-hour average) above the average natural visibility baseline. A source exceeds the threshold when the ninety-eighth percentile (eighth highest value) of the modeling results based on any one year of the three years of meteorological data modeled exceeds five-tenths deciviews.

History: Effective January 1, 2007.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-25-02. Best available retrofit technology.

1. **Submission of best available retrofit technology analysis.** The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, part 51, section 301, that contributes to visibility impairment in a class I federal area shall submit a best available retrofit technology analysis to the department. The analysis shall be submitted within nine months after being notified by the department that the existing stationary facility contributes to visibility impairment.

2. **Installation of best available retrofit technology.** The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, section 301, which contributes to visibility impairment in a class I federal area shall install and operate best available retrofit technology. The equipment shall be installed and operating as expeditiously as practicable but in no event later than five years after the United States environmental protection agency's

approval of North Dakota's state implementation plan revision for best available retrofit technology.

3. **Operation and maintenance of best available retrofit technology.** The owner or operator of a facility required to install best available retrofit technology under subsection 1 shall establish procedures to ensure such equipment is properly operated and maintained.

History: Effective January 1, 2007.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-25-03. Guidelines for best available retrofit technology determinations under the regional haze rule. Title 40, Code of Federal Regulations, part 51, appendix y, as published in the federal register on July 6, 2005, is incorporated by reference into this chapter.

The owner or operator of a fossil-fuel-fired steam electric plant with a generating capacity greater than seven hundred fifty megawatts of electricity shall comply with the requirements of appendix y. All other facility owners or operators shall use appendix y as guidance for preparing their best available control retrofit technology determinations.

History: Effective January 1, 2007.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-25-04. Monitoring, recordkeeping, and reporting. The owner or operator of any existing stationary facility that is required to install best available retrofit technology 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 33-15-21-09. Particulate monitoring shall be in accordance with the requirements of subsection 10 of section 33-15-14-06. Recordkeeping and reporting shall comply with the requirements of section 33-15-14-06. Monitoring, recordkeeping, and reporting for other source units shall comply with the requirements of section 33-15-14-06.

History: Effective January 1, 2007.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

Section 7.8.1
Interstate Transport Relating to the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards

A. Overview

Section 110 (a)(2)(D)(I) of the Clean Air Act states that each State must submit a State Implementation Plan (SIP) that contains adequate provisions:

> (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will
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> > (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or
> >
> > (II) interfere with measures required to be included in the applicable implementation plan under Part C to prevent significant deterioration of air quality or to protect visibility.

B. Nonattainment and Maintenance Area Impact

To demonstrate that emissions from North Dakota do not significantly contribute to nonattainment or interfere with maintenance of compliance with the National Ambient Air Quality Standards for ozone or particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers ($PM_{2.5}$), North Dakota relies on the modeling conducted by the U.S. Environmental Protection Agency during the development of the Clean Air Interstate Rule (CAIR) and on monitoring data and attainment status for the appropriate upwind and down wind areas. Supporting data and analysis for $PM_{2.5}$ and ozone follows.

North Dakota, as reported in the May 12, 2005 Federal Register Final Rule notice, was one of the 37 states that were evaluated for impact on nonattainment areas (70 CFR 25188, May 12, 2005). The results of EPA's modeling analysis, which determined the maximum contribution from each upwind state to downwind $PM_{2.5}$ nonattainment, indicate that the maximum North Dakota contribution to downwind states was well below the interstate transport threshold of 0.2 $\mu g/m^3$ (70 FR 25247, Table VI-7, May 12, 2005).

The closest nonattainment area for $PM_{2.5}$ is at Libby, Montana, which is approximately 450 miles from the western most border of North Dakota. This nonattainment area is generally upwind of North Dakota and is influenced by local factors including topography and meteorology. Because the nonattainment area is generally upwind of North Dakota emission sources and the large distance between these sources and the nonattainment area, it is unlikely that North Dakota sources significantly contribute to nonattainment.

To determine which of the initial 37 states contributed significantly to ozone interstate transport, in its Proposed and Final CAIR Federal Register notices EPA adopted modeling domains that excluded large parts of six states, one of which is North Dakota (69 FR 4584 and 4600, January 30, 2004; 70 FR 25246, May 15, 2005). North Dakota uses available monitoring and nonattainment information to demonstrate that it is unlikely that the State contributes significantly to ozone nonattainment or interferes with ozone maintenance in downwind states.

The closest nonattainment area for the 8-hour ozone standard is located in Colorado (Fort Collins, Boulder, Denver area). The northern border of this area is located approximately 325 miles south-southwest of the southwestern most point of North Dakota. The next closest nonattainment area is located along the eastern edge of Wisconsin, approximately 400 miles from the eastern border of North Dakota. The Wisconsin area is generally located downwind of North Dakota emission sources while the Colorado area is not.

Monitoring data gathered by the states and reported by the EPA Air Quality System indicates that during the years 2004-2006 none of the monitors in the State of North Dakota showed exceedances for the 8-hour ozone standard. During the same three-year period the monitors in Iowa and Minnesota, the closest and most likely to be affected among the downwind states, measured 8-hour ozone exceedances on less than 0.5 percent of the days. Iowa monitors monitored 8-hour exceedances on two days, and Minnesota monitors on three days. The absence of 8-hour ozone exceedances in North Dakota combined with the rare occurrence of exceedances in Iowa and Minnesota make it unlikely that the State of North Dakota contributes significantly to ozone transport affecting attainment or interfering with maintenance of NAAQS standards in downwind states.

Based on the conclusions drawn above about the unlikely occurrence of significant interstate transport of ozone from North Dakota to Minnesota or Iowa, it would follow that such a transport would be even less likely from North Dakota to the Wisconsin nonattainment area, which lies significantly further east than Minnesota.

Based on the results of the EPA's modeling in the development of the CAIR rule, the relative distance of North Dakota to downwind nonattainment areas, and analysis of monitoring data, the State of North Dakota concludes that emissions from North Dakota do not significantly affect nonattainment or maintenance areas in other states.

C. Impact on Prevention of Significant Deterioration (PSD)

EPA guidance[1] indicates that states with State Implementation Plans (SIP's) addressing Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) have adequately demonstrated that they do not affect PSD implementation in other states. EPA guidance[1] states:

1) "For 8-hour ozone, each state only needs to make a SIP submission confirming that major sources in the State are currently subject to PSD and NNSR permitting programs that implement the 8-hour ozone standard and that SIP-approved states are on track to meet the June 15, 2007 deadline for SIP submissions adopting the requirements of the Phase II ozone implementation rule."

2) "For $PM_{2.5}$, states need only provide a SIP submission confirming that major sources in the state are subject to PSD and NNSR permitting programs implemented in accordance with EPA's interim guidance calling for use of PM_{10} as a surrogate for $PM_{2.5}$ in the PSD and NNSR programs."

North Dakota has a SIP approved PSD program. Since North Dakota has no nonattainment areas, there is no NNSR program. North Dakota's PSD SIP was updated effective February 1, 2005,

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[1]EPA, August 15, 2006. Guidance for State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(I) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards. (page 8)

to conform with the federal NSR Reform rules. These changes have been submitted to EPA and were approved effective August 20, 2007. North Dakota will implement the current rules in accordance with EPA's interim guidance using PM_{10} as a surrogate for $PM_{2.5}$ in the PSD program. The 8-hour ozone standard is applied to all major sources in the state that are subject to PSD review.

Based on the conclusions stated by EPA in their August 15, 2006 guidance[1], the State of North Dakota concludes that its implementation of its PSD SIP ensures that North Dakota emission sources do not interfere with PSD implementation in other states.

D. Protection of Visibility

The August 15, 2006 guidance[2] states:

"At this point in time, EPA has made no determination that emissions from any State interfere with measures required to be included in a plan to address reasonably attributable visibility impairment. Further, EPA is not aware of any certification of existing reasonably attributable impairment of visibility by a Federal Land Manager that has not already been resolved. The EPA accordingly believes that States should be able to make a relatively simple SIP submission verifying that no source within the State emits pollutants that interfere with measures included in the visibility SIPs under the 1980 regulations."

Based on the conclusions stated by EPA, the State of North Dakota concludes there are no North Dakota sources of emissions that interfere with implementation of visibility SIP under the 1980 regulations.

The State of North Dakota is working with the Western Regional Air Partnership, including associated States and stakeholders, to prepare a SIP to address the EPA Regional Haze regulation (40 CFR 51.308). Until regional haze SIPs are submitted and approved, North Dakota believes it is not possible at this

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[1]EPA, August 15, 2006. Guidance for State Implementation Plan Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(I) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards. (page 8)

[2]Ibid. (page 9)

time to assess whether there is any interference with measures in the applicable SIP for another state for regional haze.