NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 394

October 2024

Prepared by the Legislative Council staff
for the
Administrative Rules Committee

TABLE OF CONTENTS

State Board of Dental Examiners.....1
Department of Environmental Quality.....43
Psychologist Examiners, Board of.....165
Public Instruction, Superintendent of.....175
Seed Commission.....183
Department of Human Services.....205
State Board of Water Well Contractors.....231

TITLE 20

STATE BOARD OF DENTAL EXAMINERS

OCTOBER 2024

CHAPTER 20-01-01

20-01-01-01. Organization and functions of board of dental examiners.

1. **History and functions.** In 1895 a five-member board of dental examiners was created to examine dentists as to their qualifications and to license and register qualified dentists.

2. **Board membership.** The board consists of nine members appointed by the governor. Six members must be licensed dentists, one member must be a licensed hygienist, one member must be a registered dental assistant, and one member must be an independent consumer member. ~~Members of the board serve five-year terms. No member may serve more than ten years or two 5-year terms of office.~~

3. **Board members.** Members of the board are elected by the board to fill the individual positions of president, president-elect, and secretary-treasurer. The position of executive director has been created to assist the secretary-treasurer.

4. **Per diem.** Each member of the board shall receive as compensation for each day actually engaged in the duties of the office per diem in the amount of two hundred dollars, and expense reimbursement as set forth by the office of management and budget.

5. **Inquiries.** Inquiries regarding the board may be addressed to the executive director of the board:

   ~~Rita M. Sommers, RDH, MBA~~Executive Director
   North Dakota State Board of Dental Examiners
   Box 7246
   Bismarck, ND 58507-7246
   www.nddentalboard.org
   701-258-8600

History: Amended effective October 1, 1988; November 1, 1988; July 1, 1993; May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-03, 43-28-05

20-02-01-02. Office emergency.

Every dentist, dental hygienist, dental assistant, qualified dental assistant, dental anesthesia assistant, qualified dental assistant-limited radiology registrant, or registered dental assistant practicing in North Dakota must have a current certificate of proficiency in cardiopulmonary resuscitation.

History: Effective February 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; January 1, 2011; October 1, 2024.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-10, 43-20-13.2, 43-28-06, 43-28-10.1, 43-28-15

20-02-01-03.3. Additional requirements for applications.

Applications must be completed within six months of filing. The board may require an interview with the applicant. In addition to the application requirements of North Dakota Century Code sections 43-28-11, 43-28-15, and 43-28-17, the board may require an application to include:

1. Proof of identity, including any name change.
2. An official transcript sent by an accredited dental school directly to the board.
3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within five years of application.
4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within five years of application.
5. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.
6. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.
7. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.
8. Verification of physical health and visual acuity.
9. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.
10. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.
11. Any information required by the application forms prescribed by the board.

History: Effective January 1, 2011; amended effective April 1, 2015; October 1, 2024.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-10.1, 43-28-11, 43-28-11.2, 43-28-15, 43-28-17

20-02-01-03.4. Clinical competency examination retakes.

If an applicant taking the clinical competency examination in the integrated format is unsuccessful after having exhausted all allowable retake opportunities for the failed parts, one failure is recorded. The applicant ~~must~~ then shall retake all five parts of the examination in the traditional format. If the applicant is unsuccessful in one or more parts, a second failure is recorded. If the failed parts are retaken and failed again, a third failure ~~will~~shall be recorded. A dental applicant may take a clinical examination three times before remedial training is required. After failing the examination for a third time, and prior to the fourth attempt of the examination, an applicant shall:

1. Submit to the board a detailed plan for remedial training by an accredited dental school or a dental testing agency. The ~~board must approve the~~ proposed remedial training must be approved by the board.

2. Submit ~~proof~~ to the board proof of passing the remedial training within twenty-four months of its approval by the board.

The board may grant or deny a fourth attempt of the clinical examination. A fourth attempt must occur within twelve months of the date of the board's decision. If an applicant fails any part of the examination after remedial training, ~~the board must approve~~ additional retakes must be approved by the board.

History: Effective January 1, 2011; amended effective October 1, 2024.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-10.1, 43-28-17

20-02-01-04.3. Inactive status - License reinstatement.

~~A dentist may, upon~~Upon payment of the fee determined by the board, a dentist may place the dentist's license on inactive status. A dentist on inactive status ~~shall be~~is excused from the payment of renewal fees, except inactive status renewal fees, and continuing education. A dentist on inactive status ~~shall~~may not practice in North Dakota. To reinstate a license on inactive status, the dentist shall apply on the form as prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a ~~regional~~ dental testing service, approved by the board in section 20-02-01-03.1, within five years of application or provides evidence of the clinical practice of dentistry within the previous five years. The board may~~, within the board's discretion,~~ waive this requirement at the board's discretion.

2. The applicant ~~passes~~has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

3. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

4. The applicant ~~has~~ successfully has completed a cardiopulmonary resuscitation course within two years of application.

5. Grounds for denial of the application under North Dakota Century Code section 43-28-18 do not exist.

History: Effective April 1, 2006; amended effective January 1, 2011; July 1, 2017; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-17

20-02-01-05. Anesthesia and sedation permit requirements.

The rules in this chapter are adopted ~~for the purpose of defining~~to define standards for the administration of anesthesia and sedation by ~~dentists or~~ a dentist who collaborates with a qualified and licensed anesthesia or sedation provider. A dentist may not use any form of sedation on any patient if the intent is beyond minimal sedation ~~on any patient~~ unless such dentist has a permit, currently in effect, issued by the board, and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, or moderate sedation. With the administration of anesthesia, the qualified dentist must have the training, skills, drugs, and equipment immediately available in order to rapidly identify and manage an adverse occurrence until either emergency medical assistance arrives or the patient returns to the intended level of sedation or full recovery without airway, respiratory, or cardiovascular complications.

1. Administration of nitrous oxide inhalation analgesia - Requirements. The following standards apply to the administration of nitrous oxide inhalation analgesia:

   a. Inhalation equipment must have a fail-safe system that is appropriately checked and calibrated. The equipment also must have either a functioning device that prohibits the delivery of less than thirty percent oxygen or an appropriately calibrated and functioning in-line oxygen analyzer with audible alarm. A scavenging system must be available if gases other than oxygen or air are used.

   b. Patient dental records must include the concentration administered and duration of administration.

   c. A dentist may not delegate monitoring of nitrous oxide inhalation analgesia once the patient has ingested an enteral drug for the purpose of minimal sedation.

   d. Before authorizing a dental hygienist or registered dental assistant to administer nitrous oxide inhalation analgesia, the dentist ~~must have provided and documented~~shall provide and document training in the proper and safe operation of the nitrous oxide inhalation analgesia equipment.

   e. A patient receiving nitrous oxide inhalation analgesia must be continually monitored by authorized dental staff. A dental hygienist or a registered dental assistant may terminate or reduce the amount of nitrous oxide previously administered by the authorized nitrous oxide inhalation analgesia provider.

   f. The board may issue a permit authorizing the administration of nitrous oxide inhalation to a dentist ~~or~~, dental hygienist, or registered dental assistant if the following ~~requirements are met~~dentist, dental hygienist, or registered dental assistant provides:

      (1) Evidence of successful completion of a twelve-hour, board-approved course of training or course provided by a program accredited by an accrediting body recognized by the United States department of education, and has either:

         (a) Completed the course within thirteen months before application; or

         (b) Completed the course more than thirteen months before application, has legally administered nitrous oxide inhalation analgesia for a period of time during the three years preceding application, and ~~provides~~provided written documentation from a dentist that has employed or supervised the applicant, attesting to the current clinical proficiency of the applicant to administer nitrous oxide inhalation analgesia.

(2) Evidence of current certification in basic life support by the American heart association for the health care provider, or an equivalent program approved by the board.

2. Administration of minimal sedation. A dentist administering minimal sedation shall maintain basic life support certification and comply with the following standards:

a. An appropriate sedative record must be maintained and must contain the names and time of all drugs administered, including local anesthetics and nitrous oxide. The time and condition of the patient at discharge from the treatment area and facility requires documentation.

b. Medications used to produce minimal sedation are limited to a single enteral drug, administered either singly or in divided doses, by the enteral route to achieve the desired clinical effect, not to exceed the maximum food and drug administration recommended dose for unmonitored home use in a single appointment. The administration of enteral drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation.

c. Drugs and techniques used must carry a margin of safety wide enough to render the unintended loss of consciousness unlikely for minimal sedation, factoring in titration and the patient's age, comorbidities, weight, body mass index, and ability to metabolize drugs.

d. Combining two or more enteral drugs, excluding nitrous oxide, prescribing or administering drugs that are not recommended for unmonitored home use, or administering any parenteral drug constitutes moderate sedation and requires that the dentist must hold a moderate sedation permit.

e. Facilities and equipment must include:

(1) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(2) Portable oxygen delivery system, including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen enriched ventilation to the patient;

(3) Blood pressure cuff (or sphygmomanometer) of appropriate size;

(4) Automated external defibrillator ~~(AED)~~ or defibrillator;

(5) Stethoscope or equivalent monitoring device; and

(6) The following emergency drugs must be available and maintained:

(a) Bronchodilator;

(b) Anti-hypoglycemic agent;

(c) Aspirin;

(d) Antihistaminic;

(e) Coronary artery vasodilator; and

(f) Anti-anaphylactic agent.

f. A dentist or qualified dental staff member responsible for patient monitoring must be continuously in the presence of the patient in the office, operatory, and recovery area before administration or, if the patient self-administered the sedative agent, immediately upon arrival~~,~~ and throughout recovery until the patient is discharged by the dentist.

g. A dentist shall ensure any advertisements related to the availability of antianxiety premedication, or minimal sedation clearly reflect the level of sedation provided and are not misleading.

3. Administration of moderate sedation. Before administering moderate sedation, a dentist licensed under North Dakota Century Code chapter 43-28 ~~must have~~shall obtain a permit issued by the board, renewable biennially thereafter. An applicant for an initial permit ~~must~~shall submit a completed application and application fee on a form provided by the board and meet the following requirements:

a. An applicant for an initial moderate sedation permit ~~must~~shall meet the following educational requirements. This section does not apply to a dentist who has maintained a parenteral sedation permit in North Dakota and has been administering parenteral sedation in a dental office before July 1, 2022.

(1) ~~Successfully completed~~The applicant successfully shall complete a comprehensive sixty-hour predoctoral dental school, postgraduate education or continuing education in moderate sedation with a participant-faculty ratio of not more than four-to-one. The course must include courses in enteral and parenteral moderate sedation plus individual management of twenty live patient clinical case experiences by the intravenous route and provide certification of competence in rescuing patients from a deeper level of sedation than intended, including managing the airway, intravascular or intraosseous access, and reversal medications. The formal training program must be sponsored by or affiliated with a university, teaching hospital, or other facility approved by the board or provided by a curriculum of an accredited dental school and have a provision by course director or faculty of additional clinical experience if participant competency has not been achieved in allotted time.

(2) The course must be directed by a dentist or physician qualified by experience and training with a minimum of three years of experience, including formal postdoctoral training in anxiety and pain control. The course director must possess a current permit or license to administer moderate or deep sedation and general anesthesia in at least one state.

b. A dentist utilizing moderate sedation ~~must~~shall maintain current certification in basic life support and advanced cardiac life support if treating adult patients or pediatric advanced life support if treating pediatric patients and have present a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one qualified dental staff member as specified in subsection 40 of section 20-01-02-01.

c. A permitholder may not administer or employ any agents that have a narrow margin for maintaining consciousness, including ultra-short acting barbiturates, propofol, ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that likely would render a patient deeply sedated, generally anesthetized, or otherwise not meeting the conditions of moderate sedation.

d. During moderate sedation the adequacy of ventilation must be evaluated by continual observation of qualitative clinical signs and monitoring for the presence of exhaled

carbon dioxide unless precluded or invalidated by the nature of the patient, procedure, or equipment.

e. Successfully completed the moderate site evaluation required by this chapter. An initial site evaluation must be completed within sixty days of the approval of the initial permit application.

f. Administering intranasal versed or fentanyl, or both, is considered deep sedation. Rules for deep sedation and general anesthesia site evaluations apply for administration of intranasal versed or fentanyl, or both.

4. Administration of deep sedation and general anesthesia. Before administering deep sedation or general anesthesia, a dentist licensed under North Dakota Century Code chapter 43-28 ~~must have~~shall obtain a permit issued by the board and renewable biennially thereafter. An applicant for an initial permit ~~must~~shall submit a completed application and application fee on a form provided by the board and ~~meet the following educational requirements~~:

a. Within the three years before submitting the permit application, shall provide evidence the applicant successfully has completed an advanced education program accredited by the commission on dental accreditation that provides training in deep sedation and general anesthesia and formal training in airway management, and completed a minimum of five months of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; ~~or~~

b. ~~Be~~Must be, within the three years before submitting the permit application, a diplomate of the American board of oral and maxillofacial surgeons or eligible for examination by the American board of oral and maxillofacial surgeons, a fellow of the American association of oral and maxillofacial surgeons, a fellow of the American dental society of anesthesiology, a diplomate of the national dental board of anesthesiology, or a diplomate of the American dental board of anesthesiology or eligible for examination by the American dental board of anesthesiology; or

c. For an applicant who completed the requirements of subdivision a or b more than three years before submitting the permit application, shall provide on a form provided by the board~~,~~ a written affidavit affirming the applicant has administered general anesthesia to a minimum of twenty-five patients within the year before submitting the permit application or seventy-five patients within the last five years before submitting the permit application and the following documentation:

(1) A copy of the deep sedation and general anesthesia permit in effect in another jurisdiction or certification of military training in general anesthesia from the applicant's commanding officer; and

(2) On a form provided by the board, a written affidavit affirming the completion of thirty-two hours of continuing education pertaining to oral and maxillofacial surgery or general anesthesia taken within three years before application.

d. Successfully ~~completed~~shall complete the general anesthesia and deep sedation site evaluation required by this chapter. An initial site evaluation must be completed within sixty days of the approval of the initial permit application.

e. ~~A~~For a dentist utilizing deep sedation or general anesthesia ~~must~~shall maintain current certification in basic life support and advanced cardiac life support if treating adult patients or pediatric advanced life support if treating pediatric patients.

f. AFor a dentist authorized to provide deep sedation and general anesthesia, shall utilize and have present a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least two qualified dental staff members as specified in subsection 40 of section 20-01-02-01.

5. Site evaluations for moderate sedation, deep sedation, and general anesthesia. A licensed and permitted dentist or host dentist utilizing moderate sedation, deep sedation, or general anesthesia is required to have an evaluation of the location where sedation or anesthesia services are rendered initially and every three years thereafter and shall maintain a properly equipped facility. A North Dakota licensed anesthesia or sedation provider authorized by the board shall re-evaluate the credentials, facilities, equipment, personnel, and procedures of a permitholder within every three years following a successful initial application or renewal. The purpose of the evaluation is to assess the patient's anesthetic risk and assess a site's ability to provide emergency care; therefore, the site evaluation emphasizes recognition and management of emergencies and complications associated with office administration of sedation and recordkeeping. Requirements of the site evaluation are as follows:

   a. The applicant is responsible for scheduling a site evaluation with a board-appointed anesthesia site evaluator. The host dentist must be present during the site evaluation and submit the site evaluation form to the site evaluator no less than two weeks before the scheduled site evaluation and must include the following:

      (1) Life support credentials of any qualified dental staff or medical staff and anesthesia provider or host dentist;

      (2) Copy of license of qualified dental staff or other attending medical staff, or both;

      (3) Copy of current permit to prescribe and administer controlled substances in this state issued by the United States drug enforcement administration;

      (4) Copy of patient consent agreement and health history forms;

      (5) Copy of a blank sedation monitoring form;

      (6) Preanesthesia sedation instructions; and

      (7) Post care instructions.

   b. The site evaluator shall submit a completed site evaluation form and documentation to the board. The dentist's facility where anesthesia and sedation are provided must meet the requirements of this chapter and maintain the following properly operating equipment and supplies appropriate for the age and relative size of the patient during the provision of anesthesia and sedation by the permitholder or physician anesthesiologist or certified registered nurse anesthetist or other qualified sedation provider;:

      (1) Emergency drugs as required by the board, including:

         (a) Vasopressor;

         (b) Corticosteroid;

         (c) Bronchodilator;

         (d) Muscle relaxant;

         (e) Intravenous medication for treatment of cardiopulmonary arrest;

         (f) Narcotic antagonist;

(g) Benzodiazepine antagonist;

(h) Antihistamine;

(i) Antiarrhythmic;

(j) Anticholinergic;

(k) Coronary artery vasodilator;

(l) Antihypertensive;

(m) Antihypoglycemic agent;

(n) Antiemetic;

(o) Adenosine, for general anesthesia and deep sedation sites;

(p) Dantrolene, for general anesthesia and deep sedation sites, if volatile gases are used; and

(q) Anticonvulsant;

(2) Positive pressure oxygen and supplemental oxygen delivery system;

(3) Stethoscope;

(4) Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;

(5) Oropharyngeal or nasopharyngeal airways, or both;

(6) Pulse oximeter;

(7) Auxiliary lighting;

(8) Blood pressure monitor with an automated time determined capability and method for recording the data;

(9) Cardiac defibrillator or automated external defibrillator (AED);

(10) End-tidal carbon dioxide monitor;

(11) Electrocardiograph monitor;

(12) Laryngoscope multiple blades, backup batteries, and backup bulbs;

(13) Endotracheal tubes and appropriate connectors;

(14) Magill forceps;

(15) Appropriate intravenous setup, including appropriate supplies and fluids;

(16) Cricothyrotomy equipment;

(17) Thermometer; and

(18) Scale.

c. The operatory where moderate sedation, deep sedation, or general anesthesia is to be administered must:

(1) Be of adequate size and design to permit physical access of emergency equipment and personnel and to permit effective emergency management;

(2) Be equipped with a chair or table adequate for emergency treatment, including a chair or cardiopulmonary resuscitation board suitable to administer cardiopulmonary resuscitation;

(3) Be equipped with a lighting system to permit the evaluation of the patient's skin and mucosal color with a backup system to permit the completion of any operation underway at the time of a general power failure;

(4) Be equipped with suction and backup suction equipment also including suction catheters and tonsil suction; and

(5) Be equipped with an oxygen delivery system and backup system complete with full-face masks and appropriate connectors, capable of delivering oxygen to the patient under positive pressure.

d. An operatory may double as a recovery location. A recovery room must be equipped with the following:

(1) Suction and backup suction equipment;

(2) Positive pressure oxygen;

(3) Sufficient light to provide emergency treatment;

(4) Be of adequate size and design to allow emergency access and management; and

(5) Be situated to allow the patient to be observed by the dentist or a qualified staff member at all times.

e. The applicant or permitholder shall provide the site evaluator with documentation confirming that the applicant or permitholder maintains written emergency protocol and conducts staff training on all patient emergencies listed below. The written documentation ~~of~~must demonstrate that the applicant or permitholder conducted quarterly mock codes ~~to the site evaluator and provide training to familiarize office staff in patient monitoring and the treatment~~with staff, and that each of the following clinical emergencies are included in a quarterly mock code training at least once every two years:

(1) Laryngospasm;

(2) Bronchospasm;

(3) Emesis and aspiration;

(4) Airway blockage by foreign body;

(5) Angina pectoris;

(6) Myocardial infarction;

(7) Hypertension/hypotension;

(8) Hypertensive crisis;

(9) Hematoma;

(10) Extravasation;

(11) Phlebitis;

(12) Intra-arterial injection;

(13) Syncope;

(14) Hyperventilation/hypoventilation;

(15) Seizures;

(16) Allergic and toxicity reactions; and

(17) Malignant hypothermia, deep sedation and general anesthesia only.

f. Failure to successfully complete the anesthesia inspection ~~must result~~results in an automatic suspension of anesthesia and sedation privileges. The applicant shall have thirty days from the date of inspection to correct documented deficiencies. Once the deficiencies are corrected by the applicant and approved by the ~~site evaluator~~board, the ~~permit authorizing~~board may reinstate the sedation and anesthesia privileges ~~may be reinstated~~.

g. Effective January 1, ~~2026~~2028, completion of a board-approved anesthesia simulation course and the completion of anesthesia simulation training successfully every five years thereafter as required by section 20-02-01-06.

6. Other anesthesia providers. ~~A host dentist~~Host dentists who ~~intends~~intend to use the services of a certified registered nurse anesthetist, anesthesiologist, or another dentist authorized by permit to administer moderate sedation, deep sedation, or general anesthesia, shall notify the board before sedation services are provided and arrange a site evaluation with the board appointed anesthesia professional. The sedation provider is responsible for discharge assessment. The host dentist shall run a mock code quarterly with the sedation team and maintain a record of the mock code schedule and attendance. The anesthesia provider and the host dentist shall remain at the facility until the sedated patient is discharged.

7. Renewal of permit and site evaluation. All sedation and anesthesia permits must be renewed biennially, concurrent with the dentist's license renewal. The board of dental examiners may renew such permit biennially provided:

a. Requirements of the permit have been met;

b. Application for renewal and renewal fee is received by the board before the date of expiration of the permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board ~~must~~ apply; and

c. The anesthesia site inspection is in good standing with the board of dental examiners.

8. Documentation. Dentists administering sedation or anesthesia shall maintain adequate documentation.

a. For the administration of local anesthesia, minimal sedation, and analgesia, the following documentation is required:

(1) Pertinent medical history, including weight and height;

(2) Medication administered and dosage; and

(3) Vital signs include heart rate and blood pressure.

b. For administration of moderate sedation, deep sedation, or general anesthesia the following documentation is required:

(1) A current and comprehensive medical history, to include current medications;

(2) Informed consent of the patient for the administration of anesthesia;

(3) An anesthesia record, which includes documentation of the following:

(a) Height and weight of the patient to allow for the calculation of body mass index and dosage of emergency medications;

(b) American society of anesthesiologist's physical status classification;

(c) Fasting or nothing by mouth status;

(d) Dental procedure performed on the patient;

(e) Time anesthesia commenced and ended;

(f) Parenteral access site and method, if utilized;

(g) Medication administered, including oxygen, dosage, route, and time given;

(h) Vital signs before and after anesthesia is utilized, to include heart rate, blood pressure, respiratory rate, and oxygen saturation for all patients;

(i) Intravenous fluids, if utilized;

(j) Response to anesthesia, including any complications;

(k) Condition and Aldrete score of patient at discharge;

(l) Records showing continuous monitoring of blood pressure, heart rate, and respiration using electrocardiographic monitoring and pulse oximetry recorded every five minutes, if utilized;

(m) Emergency protocols followed in the instance of an adverse event; and

(n) Staff participating in the administration of anesthesia, treatment, and monitoring.

9. Personnel.

a. During the administration of minimal sedation, the supervising dentist and at least one other individual who is experienced in patient monitoring and documentation must be present.

b. During the administration of moderate sedation, the anesthesia permit provider and at least one other individual who is experienced in patient monitoring and documentation must be present.

c. During the administration of deep sedation or general anesthesia, the anesthesia permit provider and at least two other individuals meeting the following requirements must be present:

(1) One individual to assist the host dentist as necessary.

(2) One qualified dental staff member solely responsible to assist with observation and monitoring of the patient.

d. During any sedation or anesthesia procedure, the anesthesia permit provider retains full accountability, but delegation to trained dental personnel may occur under:

(1) Direct, continuous, and visual supervision by the anesthesia permitholder if medication, excluding local anesthetic, is being administered to a patient in the intraoperative phase of surgery. A patient under general anesthesia, deep sedation, and moderate sedation is in the intraoperative phase of surgery from the first administration of anesthetic medication ~~to~~until:

(a) End of the surgical procedure;

(b) No additional anesthetic medication will be administered;

(c) Peak effect of the anesthesia medication has been reached; or

(d) The patient has regained consciousness with a full return of protective reflexes, including the ability to respond purposely to physical and verbal commands; or

(2) Direct supervision by the dentist and anesthesia permitholder if a patient is being monitored in the postoperative phase of surgery.

e. All individuals assisting the anesthesia permitholder during sedation or anesthesia shall maintain current basic life support, advanced cardiovascular life support, or pediatric advanced life support and shall be appropriately trained in emergency procedures through updates or drills that must be held at least quarterly and documented.

10. Standards for patient monitoring.

a. For the administration of local anesthesia and analgesia, patient monitoring must include the general state of the patient.

b. For the administration of minimal sedation, patient monitoring must include the following:

(1) Pre- and post-procedure heart rate and respiratory rate;

(2) Pre- and post-procedure blood pressure; and

(3) Level of anesthesia or sedation.

c. For the administration of moderate sedation, patient monitoring must include the following:

(1) Continuous heart rate, respiratory rate, and oxygen saturation;

(2) Intermittent blood pressure every five minutes or more frequently;

(3) Continuous electrocardiograph, if clinically indicated by patient history, medical condition, or age;

(4) End-tidal carbon dioxide monitoring (capnography); and

(5) Level of anesthesia or sedation.

d. For the administration of deep sedation or general anesthesia, patient monitoring must include the following:

(1) Continuous heart rate, respiratory rate, and oxygen saturation;

(2) Continuous ventilatory status (spontaneous, assisted, controlled) for the administration of general anesthesia to a patient with an advanced airway in place (e.g. endotracheal tube or laryngeal mask airway);

(3) Intermittent blood pressure every five minutes or more frequently;

(4) Continuous electrocardiograph;

(5) Continuous temperature for the administration of volatile anesthesia gases or medications which are known triggers of malignant hyperthermia, otherwise the ability to measure temperature should be readily available;

(6) End-tidal carbon dioxide monitoring; and

(7) Level of anesthesia or sedation.

e. Monitoring equipment must be checked and calibrated in accordance with the manufacturer's recommendations and documented on an annual basis.

11. Patient evaluation required. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the class I through V risk category classifications of the American society of anesthesiologists. The findings of the evaluation, the American society of anesthesiologists risk assessment class assigned, and any special considerations must be recorded in the patient's record.

12. Informed written consent. Before administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

13. Pediatric patients. Sedating medication may not be prescribed for or administered to a patient eight years of age or younger before the patient's arrival at the dentist office or treatment facility.

14. Emergency management. The licensed dentist authorized by permit to administer sedation or anesthesia and staff with patient care duties ~~shall~~must be trained in emergency preparedness. Written protocols must include training requirements and procedures specific to the permitholder's equipment and drugs for responding to emergency situations involving sedation or anesthesia, including information specific to respiratory emergencies. The permitholder shall document this review of office training or mock codes. Protocols must include the American heart association's basic life support or cardiopulmonary resuscitation and advanced cardiac life support, or pediatric advanced life support for any practitioner administering moderate sedation, deep sedation, or general anesthesia.

a. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

b. Quarterly mock codes to simulate office medical emergencies must be documented and available during a site evaluation.

c. Authorization of duties. A dentist who authorizes the administration of general anesthesia, deep sedation, or moderate sedation in the dentist's dental office is responsible for assuring that:

(1) The equipment for administration and monitoring is readily available and in good working order before performing dental treatment with anesthesia or sedation. The equipment either must be maintained by the dentist in the dentist's office or provided by the anesthesia or sedation provider;

(2) The person administering the anesthesia or sedation is appropriately licensed;

(3) The individual authorized to monitor the patient is qualified;

(4) A physical evaluation and medical history is taken before administration of general anesthesia or sedation. A dentist holding a permit shall maintain records of the physical evaluation, medical history, and general anesthesia or sedation procedures; and

(5) Administration of sedation by another qualified provider requires the operating dentist to maintain advanced cardiac life support if the patient is nine years of age or older and pediatric advanced life support if the patient is eight years old or younger.

d. Reporting. All licensed dentists in the practice of dentistry in this state shall submit a report within a period of seven days to the board office of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, minimal sedation, nitrous oxide inhalation analgesia, moderate sedation, deep sedation, or general anesthesia.

(1) The report must include responses to at least the following:

(a) Description of dental procedure;

(b) Description of preoperative physical condition of patient;

(c) List of drugs and dosage administered;

(d) Description, in detail, of techniques utilized in administering the drugs utilized;

(e) Description of adverse occurrence:

[1] Description, in detail, of symptoms of any complications, to include onset and type of symptoms in patient.

[2] Treatment instituted on the patient.

[3] Response of the patient to the treatment.

(f) Description of the patient's condition on termination of any procedures undertaken; and

(g) The unique reporting identification issued by the dental anesthesia incident reporting system, indicating a report has been submitted to the national database.

(2) Violations. A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation.

15. Controlled pharmaceuticals.

    a. A dentist ~~must~~shall secure and maintain controlled pharmaceuticals in accordance with the state and federal guidelines.

    b. Used controlled pharmaceuticals or medications must be discarded immediately with documentation of disposal in conformance with drug enforcement administration guidelines.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-01, 43-28-06, 43-28-15, 43-28-18.1

20-02-01-06. Continuing dental education for dentists.

Each dentist shall maintain documentation of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours ~~will~~ accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than sixteen hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor or without the opportunity to interact in real-time with the proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from online education that allows for real-time interaction between attendees and the proctor. The continuing education must include:

    a. ~~Two~~At least two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

    b. ~~Two~~At least two hours of infection control.

    c. A cardiopulmonary resuscitation course.

    d. For sedation and anesthesia permitholders:

        (1) ~~Six~~At least six hours related to sedation or anesthesia; and

        (2) ~~Two~~At least two hours ~~of~~related to anesthesia emergencies that are based on actual adverse anesthesia events or actual closed ~~claim anesthesia continuing education courses~~insurance claims. Content offered by insurance providers or licensees of the board may be approved by the board.

    e. ~~For anesthesia and sedation permitholders effective January 1, 2026, and every five years thereafter, successful completion of a board-approved anesthesia simulation course and the completion of anesthesia simulation training~~No more than two hours related to practice management or administrative aspects of dentistry.

4. Mere registration at a dental convention without specific attendance at continuing education presentations ~~will~~is not ~~be~~ creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

5. All dentists must hold a current cardiopulmonary resuscitation certificate. General anesthesia, deep sedation, and moderate sedation providers shall maintain current advanced cardiac life support or pediatric advanced life support certification as determined by the age of the patients treated. A dentist who utilizes minimal sedation shall maintain basic life support certification.

6. Effective January 1, ~~2026~~2028, all dentists who administer general anesthesia, deep sedation, and moderate sedation shall successfully complete an approved anesthesia simulation training course and complete anesthesia simulation training successfully every five years thereafter. Proof of completion of this requirement must be submitted to the anesthesia inspector as required in subsection 5 of section 20-02-01-05.

7. The board may audit the continuing education credits of a dentist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

8. A dentist who maintains a license on inactive status is not subject to continuing education requirements.

History: Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006; October 1, 2007; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-28-06
Law Implemented: NDCC ~~23-12-09,~~ 43-28-06, 43-28-16.2

20-02-01-11. Permit for the use of dermal fillers and botulinum toxin for dental use.

The rules in this chapter are adopted ~~for the purpose of defining~~to define standards for the administration of dermal fillers and botulinum toxin by a dentist if the use is limited to the practice of dentistry as defined in subsection 7 of North Dakota Century Code section 43-28-01. Notwithstanding a dentist who specializes in oral and maxillofacial surgery, the board may issue a permit to a dentist who applies on forms prescribed by the board and pays the initial fee or biennial renewal fee as required by subsection 1 of section 20-05-01-01 to administer botulinum toxin or dermal fillers for the purpose of functional, therapeutic, and aesthetic dental treatment purposes under the following conditions if the dentist provides evidence ~~that demonstrates~~demonstrating one of the following:

1. The applicant has completed a course and received satisfactory training in a residency or other educational program accredited by the commission on dental accreditation of the American dental association;

2. The applicant ~~has~~ successfully has completed a board-approved continuing education course of instruction within the previous three months of application which includes neurophysiology, including facial tissues, parasympathetic, sympathetic, and peripheral nervous systems relative to the peri-oral tissue, and facial architecture, and:

   a. Patient assessment and consultation for botox and dermal fillers;

   b. Indications and contraindications for techniques;

c. Proper preparation and delivery techniques for desired outcomes;

d. Enhancing and finishing esthetic dentistry cases with dermal fillers;

e. Botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;

f. Knowledge of adverse reactions and management and treatment of possible complications;

g. Patient evaluation for best esthetic and therapeutic outcomes;

h. Integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans; and

i. Live patient hands-on training, including diagnosis, treatment planning, and proper dosing and delivery of botox and dermal fillers; or

3. The applicant ~~has~~ successfully has completed a continuing education course of instruction substantially equivalent to the requirements of this state and provides evidence from another state or jurisdiction where the applicant legally is or was authorized to administer dermal fillers and botulinum toxin.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-01, 43-28-06

CHAPTER 20-03-01
DUTIES

Section
20-03-01-01 Duties
20-03-01-01.1 Expanded Duties of ~~Registered~~ Dental Assistants
20-03-01-01.2 Requirements of Permit for Expanded Duties
20-03-01-02 Prohibited Services
20-03-01-03 Annual Registration of Dental Assistants Performing Expanded Duties [Repealed]
20-03-01-04 Criteria for Dental Assistants Placing Sealants [Repealed]
20-03-01-05 Registration of ~~Registered and Qualified~~ Dental Assistants
20-03-01-05.1 Additional Expanded Duties of Registered Dental Assistants [Repealed]
20-03-01-06 Continuing Dental Education for ~~Qualified and Registered~~ Dental Assistants

20-03-01-01. Duties.

Duties are delegated to ~~nonregistered and registered~~ dental assistants under prescribed levels of supervision as follows:

1. A dental assistant who is not registered with the board and who is employed by a dentist may ~~perform the following basic supportive dental duties under direct supervision~~:

   a. ~~Take and record pulse, blood pressure, and temperature.~~Perform the following duties under direct supervision:

   (1) Take and record pulse, blood pressure, and temperature.

   ~~b.~~ (2) Take and record preliminary dental and medical history for the interpretation by the dentist.

   ~~c.~~ (3) Apply topical medications and drugs to oral tissues, including topical anesthetic, topical fluoride, fluoride varnish, and desensitizing agents, but not including caustic agents.

   ~~d.~~ (4) Receive removable dental prosthesis for cleaning or repair.

   ~~e.~~ (5) Take impressions for study casts.

   ~~f.~~ (6) Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

   ~~g.~~ (7) Retract patient's cheek, tongue, or other tissue parts during a dental procedure.

   ~~h.~~ (8) Remove such debris as is normally created in the course of treatment during or after dental procedures by vacuum devices, compressed air, mouthwashes, and water.

   ~~i.~~ (9) Isolate the operative field, not to include rubber dams.

   ~~j.~~ (10) Hold a curing light for any dental procedure. Curing lights may not include a laser capable of cutting, burning, or damaging hard or soft tissue or for electrosurgery for tissue retraction.

   (11) Produce on a patient of record, a final scan by digital capture for review and inspection by the authorizing dentist for a prescriptive fixed or removable appliance.

   (12) Monitor a patient who has been induced into nitrous oxide analgesia if the dentist has provided sufficient training to the dental assistant completed after January 1, 2024. The dentist shall maintain documentation of the training for the duration of the

delegation and shall provide documentation of the training to the board upon request.

b. Perform the following duties under general supervision:

(1) Provide oral hygiene instructions and education.

(2) Remove periodontal dressings.

2. A qualified dental assistant may ~~perform the following duties~~:

a. ~~Duties set forth in subsection 1~~Perform the following duties under the direct supervision of a dentist~~.~~:

(1) Duties set forth in subsection 1.

(2) Acid etch enamel surfaces as directed by the dentist.

(3) Dry root canal with paper points.

(4) Apply resin infiltration.

(5) Orally transmit a prescription that has been authorized by the supervising dentist.

(6) Remove band and bracket adhesives with a slow-speed handpiece.

(7) Place and remove matrix bands and wedges.

b. ~~Take dental radiographs under the direct supervision of a dentist.~~Perform the following duties under the general supervision of a dentist:

(1) Produce on a patient of record, a final scan by digital capture for review and inspection by the authorizing dentist for a prescriptive fixed or removable appliance.

(2) Take and record pulse, blood pressure, and temperature.

(3) Take and record preliminary dental and medical history for the interpretation by the dentist.

(4) Apply topical medications and drugs to oral tissues, including topical anesthetic and anticariogenic agents, and desensitizing agents.

(5) Place and remove arch wires or appliances that have been activated by the dentist.

(6) Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative care.

(7) Remove sutures.

(8) Place, tie, and remove ligature wires and elastic ties, and select and place orthodontic separators.

(9) Preselect and prefit orthodontic bands.

(10) Repack dry socket medication and packing for palliative care.

(11) Take dental radiographs.

c. Perform the following duties under the indirect supervision of a dentist:

(1) Polish coronal surfaces of teeth with a rubber cup or brush after the dentist provides the dental assistant with sufficient training. The dentist shall maintain documentation of the training completion for the duration of the delegation and provide it to the board upon request.

(2) Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.

3. A qualified dental assistant-limited radiology registrant may perform the duties listed in subsection 1, and may take dental radiographs under the general supervision of a dentist.

~~3.~~4. A registered dental assistant may perform the duties set forth in subsection 2 and the following duties under the direct supervision of a dentist:

a. Acid etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.

b. Take face bow transfers.

c. ~~Place and remove matrix bands and wedges.~~

~~d.~~ Adjust permanent crowns outside of the mouth.

~~e.~~d. ~~Orally transmit a prescription that has been authorized by the supervising dentist.~~

~~f.~~ Administer emergency medications to a patient in order to assist the dentist in an emergency.

~~g.~~e. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

~~4.~~5. A registered dental assistant may perform the following duties on a patient of record under the indirect supervision of a dentist:

a. ~~Dry root canal with paper points.~~

~~b.~~ Place and remove rubber dams.

~~c.~~b. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.

~~d.~~c. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments or a slow-speed handpiece.

~~e.~~d. Place and remove periodontal dressings.

~~f.~~e. Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.

~~g.~~f. Apply bleaching solution, activate light source, and monitor and remove bleaching materials.

~~h.~~g. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.

~~5.~~6. A registered dental assistant may perform the following duties under the general supervision of a dentist:

a. Take and record pulse, blood pressure, and temperature.

b. Take and record preliminary dental and medical history for the interpretation by the dentist.

c. Apply topical medications and drugs to oral tissues, including topical anesthetic, ~~and~~ topical fluoride, fluoride varnish, silver diamine fluoride, hemostatic agents, and desensitizing agents ~~but not including caustic agents~~.

d. Receive removable dental prosthesis for cleaning or repair.

e. Take impressions or occlusal bite registrations for study casts.

f. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

g. Remove sutures.

h. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

i. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

j. Provide oral hygiene education and instruction.

k. Provide an oral assessment for interpretation by the dentist.

l. Repack dry socket medication and packing for palliative treatment.

m. Apply pit and fissure sealants if the registered dental assistant has provided documentation of a board-approved sealant course or training that includes hand skills, and has received an endorsement from the board. Adjust sealants with slow-speed handpiece.

n. Polish the coronal surfaces of the teeth with a rubber cup or brush.

o. Polish restorations with a slow-speed handpiece.

p. Take dental radiographs.

q. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.

r. Preselect and prefit orthodontic bands.

s. Perform nonsurgical clinical and laboratory diagnosis tests, including pulp testing, for interpretation by the dentist.

t. Place and remove arch wires or appliances that have been activated by a dentist.

u. Provide screenings as defined by subsection 44 of section 20-01-02-01.

v. Adjust a temporary denture or partial for dentitions actively under treatment for which permanent dentures or partial dentures are being fabricated.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024.

General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.1. Expanded duties of ~~registered~~ dental assistants.

A registered dental assistant shall apply for a permit to perform the following duties:

1. A registered dental assistant authorized by permit and under the direct supervision of a dentist may perform the following restorative functions:

   a. Place, carve, and adjust ~~class I, II, and class V~~ amalgam ~~or~~, glass ionomer, or composite restorations with hand instruments or a slow-speed handpiece;

   b. Adapt and cement stainless steel crowns; and

   c. Place, contour, and adjust ~~class I, II, and class V~~ composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

2. A ~~registered~~ dental anesthesia assistant ~~or a dental sedation assistant~~ authorized by a class I permit and under the contiguous supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:

   a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation or general anesthesia;

   b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open;

   c. Prepare anesthesia equipment and perform patient monitoring; and

   d. Assist with emergency treatment and protocols.

3. A ~~registered~~ dental anesthesia assistant ~~or a dental sedation assistant~~ authorized by a class II permit and under the direct visual supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:

   a. Draw up and prepare medications;

   b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;

   c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and

   d. Adjust an electronic device to provide medications, such as an infusion pump upon verbal command of the supervising dentist.

4. A registered dental assistant authorized by permit and under the indirect supervision of a dentist may administer nitrous oxide analgesia to a patient who has not taken sedative medications before treatment in accordance with subsection 2 of section 20-03-01-05.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-01.2. Requirements of permit for expanded duties.

The board may grant a permit to a registered dental assistant or ~~a dental sedation assistant for the following:~~any other individual who meets the criteria listed below. Individuals authorized by other North

Dakota licensing boards and whose scope of practice encompasses the duties of a dental anesthesia assistant are not required to obtain the respective anesthesia permit from the board to carry out the duties listed in this section.

1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a registered dental assistant or ~~dental sedation assistant~~any other individual to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide general anesthesia, deep sedation, or moderate sedation, upon successful completion of the following:

   a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.

   b. ~~Submits~~The applicant submits proof of current certification status from the American association of oral and maxillofacial surgeon's dental anesthesia assistant national certification or a board-approved competency examination.

   c. The applicant holds current and valid certification for health care provider basic life support, advanced cardiac life support, or pediatric advanced life support; and

   d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered dental assistant will be performing anesthesia assistant services.

2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental assistant or ~~dental sedation assistant~~any other individual to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide general anesthesia, deep sedation, or moderate sedation, upon successful completion of the following:

   a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.

   b. ~~Submits~~The applicant submits proof of current dental anesthesia assistant national certification or a board-approved competency examination;

   c. The applicant has successfully completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;

   d. The applicant holds current and valid certification for health care provider basic life support, advanced cardiac life support, or pediatric advanced life support; and

   e. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered or qualified dental assistant will be performing anesthesia assistant services.

3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental assistant under the direct supervision of a dentist to provide restorative functions under the following conditions:

   a. The applicant meets any of the following requirements:

      (1) The applicant has successfully completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed ~~the western regional examining board's restorative~~a dental testing agency examination ~~or other equivalent examinations~~ approved by the board, within the last five years.

The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) The applicant has successfully passed ~~the western regional examining board's restorative examination or other board-approved~~a board-approved dental testing agency examination over five years from the date of application, and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provides evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years from the date of application.

b. A registered dental assistant may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.

c. The restorative functions only may be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental assistant.

d. Before the patient is released, the final restorations must be checked and documented by the supervising dentist.

History: Effective July 1, 2022; amended effective October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.2

20-03-01-02. Prohibited services.

A dental assistant, qualified dental assistant, or registered dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administer local anesthetics, sedation or general anesthesia drugs or titrate local anesthetics, sedation or general anesthesia drugs without a board authorized permit.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Adjust a crown which has been cemented by a dentist.
6. Activate any type of orthodontic appliance or fabricate orthodontic impressions for an individual who is not a patient of record.
7. Cement or bond orthodontic bands or brackets that have not been previously placed by a dentist.
8. Place bases or cavity liners.
9. Scaling, root planing, or gingival curettage.
10. Measure the gingival sulcus with a periodontal probe.

11. Use a high-speed handpiece inside the mouth.

12. Unless authorized by permit in accordance with subsection 1 of section ~~20-03-01-05.1~~20-02-01-05.1, monitor a patient who has been induced to a level of moderate sedation, deep sedation, or general anesthesia until the dentist authorized by permit to administer sedation or anesthesia determines the patient may be discharged for recovery.

History: Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002; July 1, 2004; January 1, 2011; April 1, 2015; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-05. Registration of ~~registered and qualified~~ dental assistants.

An individual seeking registration as a ~~registered or qualified~~ dental assistant shall apply on forms prescribed by the board. The application must be notarized and include the application fee.

1. The board may grant registration as a registered dental assistant to an applicant meeting all the following requirements:

   a. The applicant meets any of the following requirements:

      (1) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, within one year of application.

      (2) The applicant was certified by the dental assisting national board ~~within one year of application.~~:

         a. Within one year of application; or

         b. More than one year prior to application, and within two years before application, earned sixteen hours of continuing education in accordance with section 20-03-01-06, and provides evidence the applicant was gainfully and relevantly employed in the time prior to application. Proof of gainful and relevant employment may include letters of recommendation, payroll documentation, or other materials requested by the board.

      (3) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

      (4) The applicant ~~was certified by the dental assisting national board, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06~~is licensed in good standing under the laws of another jurisdiction and possesses qualifications, education, or experience substantially similar to the requirements for licensure set forth in this section. Applicants shall submit evidence of at least one year of gainful and relevant employment in the practice prior to application. Proof of gainful and relevant employment may include letters of recommendation, payroll documentation, or other materials requested by the board. Applicants shall submit evidence of earning sixteen hours of continuing education in accordance with section 20-03-01-06 and meet other criteria as may be required by the board.

      (5) The applicant successfully completed the examination administered by the joint commission on national dental examinations or the dental hygiene certification

board of Canada and completed within two years of application sixteen hours of continuing education in accordance with section 20-03-01-06.

b. The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

c. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

d. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

2. The board may grant registration as a qualified dental assistant to an applicant meeting all the following requirements:

a. The applicant meets any of the following requirements:

(1) The applicant passed the national entry level dental assistant certification administered by the dental assisting national board and completed three hundred hours of on-the-job clinical training within one year of application.

(2) The applicant passed the national entry level dental assistant certification administered by the dental assisting national board, three hundred hours of on-the-job clinical training, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

(3) The applicant successfully completed the national entry level dental assistant certification administered by the dental assisting national board and successfully completed the North Dakota department of career and technical education dental assisting education program association.

(4) The applicant successfully completed a board-approved equivalent course within one year of application.

(5) The applicant is licensed in good standing under the laws of another jurisdiction and possesses qualifications, education, or experience substantially similar to the requirements for licensure set forth in this section. Applicants shall submit evidence of at least one year of gainful and relevant employment in the practice prior to application. Proof of gainful and relevant employment may include letters of recommendation, payroll documentation, or other materials requested by the board. Applicants shall submit evidence of earning sixteen hours of continuing education in accordance with section 20-03-01-06 and meet other criteria as may be required by the board.

b. The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

c. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

d. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

3. The board may grant registration as a qualified dental assistant-limited radiology registrant to an applicant meeting all the following requirements:

a. Within two years of application, the applicant obtained the dental assisting national board's radiation health and safety certificate or completed a radiation health and safety course approved by the board.

b. Within two years of application, the applicant completed a cardiopulmonary resuscitation course.

c. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

History: Effective January 1, 2011; amended effective July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.2

20-03-01-06. Continuing dental education for ~~qualified and registered~~ dental assistants.

~~Each qualified or registered dental assistant~~Dental assistants shall provide evidence of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing education hours ~~will~~ accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor or without the opportunity to interact in real-time with the proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from webinars or classroom style learning that allows for real-time interaction between attendees and the proctor. The continuing education must include:

   a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. Two hours of infection control.

   c. A cardiopulmonary resuscitation course.

   d. For registered dental assistants or qualified dental assistants that hold a dental anesthesia assistant ~~permitholders~~permit, at least two hours related to sedation or anesthesia.

   e. For registered dental restorative assistant permitholders, two hours related to restorative dentistry.

   f. No more than one hour related to practice management or administration.

4. For qualified dental assistant-limited radiology registrants, the continuing education must include:

   a. At least two hours related to infection control.

b. A cardiopulmonary resuscitation course.

5. For individuals whose sole registration with the board is that of a dental anesthesia assistant, the continuing education must include:

a. At least two hours related to sedation or anesthesia.

b. A cardiopulmonary resuscitation course.

~~4.~~6. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

~~5.~~7. All qualified or registered dental assistants must hold a current cardiopulmonary resuscitation certificate.

~~6.~~8. The board may audit continuing education credits of a registered dental assistant. Proof of continuing education shall be maintained from the previous renewal cycle. Upon receiving notice of an audit from the board, a registered dental assistant shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the registration.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.1

CHAPTER 20-04-01
DUTIES

Section	
20-04-01-01	Duties
20-04-01-02	Prohibited Services
20-04-01-03	Duties of Dental Hygienists - Administration of Local Anesthesia - Authorization
20-04-01-03.1	Duties of the Dental Hygienist - Requirements of Permit
20-04-01-04	Additional Requirements for Licensure by Examination
20-04-01-04.1	Clinical Competency Examination Retakes
20-04-01-05	Additional Requirements for Licensure by Credential Review
20-04-01-05.1	Refresher Course - Reentry
20-04-01-06	Additional Requirements for Applications
20-04-01-07	Inactive Status - License Reinstatement
20-04-01-08	Continuing Dental Education for Dental Hygienists
20-04-01-09	Volunteer License

20-04-01-01. Duties.

1. A dental hygienist may perform the following services under the direct supervision of a dentist:

   a. ~~Administer local anesthetic as authorized by section 20-04-01-03~~Apply resin infiltration.

   b. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).

   c. Place and remove matrix bands or wedges.

   d. Adjust permanent crowns outside of the mouth.

   e. Acid-etch enamel surfaces before direct bonding of orthodontic brackets or composite restorations.

   f. Take face bow transfers.

   g. Administer emergency medications to a patient in order to assist the dentist.

2. A dental hygienist authorized by permit and under the direct supervision of a dentist may:

   a. Place, carve, and adjust ~~class I, II, and class V~~ amalgam ~~or~~, glass ionomer restorations, or composite restorations with hand instruments or a slow-speed handpiece;

   b. Adapt and cement stainless steel crowns; and

   c. Place, contour, and adjust ~~class I, II, and class V~~ composite restorations where the margins are entirely within the enamel with hand instruments or a slow-speed handpiece.

3. A dental hygienist may perform the following services under the indirect supervision of a dentist:

   a. ~~Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids)~~Administer local anesthesia as authorized by section 20-04-01-03.

   b. Dry root canal with paper points.

   c. Place and remove rubber dams.

d. Place retraction cord in the gingival sulcus of a prepared tooth before the dentist taking an impression of the tooth.

e. Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.

f. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a dentist.

g. Assist a dentist authorized by permit as set forth in section 20-02-01-05 as follows:

(1) Sedation procedure preparation and presedation documentation, including date of procedure, nothing by mouth status, availability of responsible adult escort, and allergies.

(2) Emergency equipment and use preparedness.

(3) Monitor a patient discharged by a dentist once the patient is in recovery.

(4) Documentation of patient responsiveness, vital signs, including heart rate, respiratory rate, blood pressure, oxygen saturation, and expired carbon dioxide.

(5) Training must be documented and may be acquired directly by an employer-dentist, by a planned sequence of instruction in an educational institution, or by in-office training.

h. ~~Monitor a patient who has been inducted by a dentist into nitrous oxide inhalation analgesia.~~

~~i. A dental hygienist authorized by permit and under the indirect supervision of a dentist may administer nitrous oxide analgesia to a patient who has not taken sedative medications prior to or for the duration of the dental hygiene treatment in accordance with section 20-02-01-05~~A dental hygienist authorized by permit may administer nitrous oxide analgesia to a patient who has not taken sedative medications before treatment in accordance with section 20-02-01-05.

4. A dental hygienist authorized by permit and under contiguous supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:

a. Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia.

b. Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

c. Prepare anesthesia equipment and perform patient monitoring.

d. Assist with emergency treatment and protocols.

5. A dental hygienist authorized by permit and under direct visual supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia may:

a. Draw up and prepare medications;

b. Follow instructions to deliver medication into an intravenous line upon verbal command of the supervising dentist;

c. Adjust the rate of intravenous fluids infusion beyond a keep-open rate upon verbal command of the supervising dentist; and

d. Adjust an electronic device to provide medications, such as an infusion pump upon the verbal command of the supervising dentist.

6. A dental hygienist may perform the following services under the general supervision of a dentist:

a. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist also may perform root planing and soft tissue curettage upon direct order of the dentist.

b. Polish and smooth existing restorations with a slow-speed handpiece.

c. Apply topical applications of drugs to the oral tissues and anticariogenic caries arresting and desensitizing solutions to the teeth.

d. Take impressions for study casts on a patient of record.

e. Take and record preliminary medical and dental histories for the interpretation by the dentist.

f. Take and record pulse, blood pressure, and temperature.

g. Provide oral hygiene treatment planning after an oral assessment or dentist's diagnosis.

h. Take dental radiographs.

i. Apply therapeutic agents subgingivally for the treatment of periodontal disease.

j. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments or a slow-speed handpiece.

k. Receive removable dental prosthesis for cleaning and repair.

l. Take occlusal bite registration for study casts.

m. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

n. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.

o. Apply pit and fissure sealants. Adjust sealants with slow-speed handpiece.

p. Place and remove periodontal dressings, dry socket medications, and packing.

q. Remove sutures.

r. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.

s. Preselect and prefit orthodontic bands.

t. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

u. Place and remove arch wires or appliances that have been activated by a dentist.

v. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

w. Provide an oral assessment for interpretation by the dentist.

x. Orally transmit a prescription that has been authorized by the supervising dentist.

y. Repack dry socket medication and packing for palliative treatment.

z. Screenings as defined in section 20-01-02-01.

aa. Apply bleaching solution, activate light source, and monitor and remove bleaching materials.

bb. Apply interim therapeutic restorations using the standards and protocols established by an authorizing dentist and after completion of a board-approved course.

cc. Adjust a temporary denture or partial for dentitions actively under treatment for which permanent dentures or partial dentures are being fabricated.

dd. Produce on a patient of record, a final scan by digital capture for review and inspection by the authorizing dentist for a prescriptive fixed or removable appliance.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006; January 1, 2011; April 1, 2015; July 1, 2017; April 1, 2021; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2, 43-20-03, 43-20-11, 43-20-12

20-04-01-03. Duties of dental hygienists - Administration of local anesthesia - Authorization.

A dental hygienist may perform the following services under the ~~direct~~indirect supervision of a dentist:

1. A licensed dental hygienist may apply for authorization to administer local anesthesia to a patient ~~who is at least eighteen years old, under the direct supervision of a licensed dentist~~.

2. Requirements for local anesthesia authorization are as follows:

   a. ~~Submit~~A licensed dental hygienist shall submit evidence that the hygienist successfully completed a didactic and clinical course in local anesthesia within the last ~~twenty-four months~~five years sponsored by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association resulting in the dental hygienist becoming clinically competent in the administration of local anesthesia; or

   b. ~~Submit~~A licensed dental hygienist shall submit evidence that the hygienist has been authorized to administer local anesthesia in another jurisdiction and provide verification of clinical competency during the previous ~~twelve months~~five years. Verification may consist of the following:

      (1) A letter from the accredited school with the school seal affixed. Photocopies will not be accepted.

      (2) A notarized copy of the certification of the local anesthesia course .

      (3) A notarized letter from a licensed dentist stating the licensed dental hygienist has competently administered local anesthesia.

~~c. A licensed dental hygienist requesting authorization to administer local anesthesia who cannot provide verification as required in this section must submit evidence of successful completion of a didactic and clinical course in local anesthesia sponsored by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.~~

History: Effective July 1, 2004; amended effective April 1, 2021; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03, 43-20-12

20-04-01-03.1. Duties of the dental hygienist - Requirements of permit.

The board may issue or renew a permit to a dental hygienist for the following:

1. The board may issue or renew a class I dental anesthesia assistant permit authorizing a dental hygienist to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia, upon successful completion of the following:

   a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course.

   b. The applicant submits proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification, or a board-approved competency examination;

   c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

   d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered dental hygienist will be performing anesthesia assistant services.

2. The board may issue or renew a class II dental anesthesia assistant permit authorizing a registered dental hygienist to provide anesthesia assistance under the supervision of a dentist authorized by permit to provide moderate sedation, deep sedation, or general anesthesia upon successful completion of the following:

   a. The applicant submits evidence of a board-approved dental anesthesia assistant education and training course and has proof of current certification status from the American association of oral and maxillofacial surgeons dental anesthesia assistant national certification or a board-approved competency examination;

   b. The applicant ~~has~~ successfully has completed hands-on training in intravenous access or phlebotomy that includes live experience starting and maintaining intravenous lines;

   c. The applicant holds current and valid certification for health care provider basic life support, or advanced cardiac life support or pediatric advanced life support; and

   d. The applicant provides a copy of a valid North Dakota general anesthesia, deep sedation, or moderate sedation permit of the dentist where the registered dental hygienist will be performing anesthesia assistant services.

3. The board may issue or renew a permit on forms prescribed by the board authorizing a registered dental hygienist under the direct supervision of a dentist to provide restorative functions under the following conditions:

a. The applicant meets any of the following requirements:

(1) The applicant ~~has~~ successfully has completed a board-approved curriculum from a program accredited by the commission on dental accreditation of the American dental association or other board-approved course and successfully passed ~~the western regional examining board's~~a dental testing agency restorative examination or other equivalent examinations approved by the board within the last five years. The board may require successful completion of the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination; or

(2) The applicant has successfully passed ~~the western regional examining board's~~a dental testing agency restorative examination or other board-approved examination over five years from the date of application and successfully completed the restorative function component of the dental assisting national board's certified restorative functions dental assistant certification examination or other board-approved examination and provided evidence from another state or jurisdiction where the applicant legally is or was authorized to perform restorative functions and certification from the supervising dentist of successful completion of at least twenty-five restorative procedures within the immediate five years before the date of application.

b. A dental hygienist may perform the placement and finishing of direct alloy or direct composite restorations, under the direct supervision of a licensed dentist, after the supervising dentist has prepared the dentition for restoration.

c. The restorative functions ~~shall only~~may be performed after the patient has given informed consent for the placement of the restoration by a restorative functions dental hygienist.

d. Before the patient is released, the final restorations ~~shall~~must be checked and documented by the supervising dentist.

History: Effective April 1, 2015; amended effective July 1, 2017; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03, 43-20-12

20-04-01-04. Additional requirements for licensure by examination.

The board may grant a license to practice dental hygiene to an applicant who has met the requirements of North Dakota Century Code section 43-20-01.2 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examinations or the dental hygiene certification board of Canada within five years of application.

2. The applicant has passed, within five years of application, a clinical competency examination administered by ~~one of the following:~~

~~a. Any regional dental testing service before September 17, 2009.~~

~~b. Central regional dental testing service.~~

~~c. Council of interstate testing agencies.~~

~~d. Commission on dental competency assessments - western regional examining board.~~

~~e. American board of dental examiners.~~

~~3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.~~

~~4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence~~a dental testing agency approved by the board.

History: Effective January 1, 2011; amended effective April 1, 2021; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2

20-04-01-04.1. Clinical competency examination retakes.

A dental hygiene applicant may take a clinical examination three times before remedial training is required. After failing the examination for a third time, and prior to the fourth attempt of the examination, an applicant shall:

1. Submit to the board a detailed plan for remedial training by an accredited dental hygiene school or a dental testing agency. The ~~board must approve the~~ proposed remedial training must be approved by the board.

2. Submit proof to the board of passing the remedial training within twenty-four months of its approval by the board. The board may grant or deny a fourth attempt of the clinical examination. A fourth attempt must occur within twelve months of the date of the board's decision. If an applicant fails any part of the examination after remedial training, ~~the board must approve~~ additional retakes must be approved by the board.

History: Effective April 1, 2015; amended effective October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2

20-04-01-08. Continuing dental education for dental hygienists.

Each dental hygienist shall provide evidence of attendance or participation in continuing clinical dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours ~~will~~ accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry ~~will~~must be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from self-study. Self-study is an educational process designed to permit a participant to learn a given subject without involvement of a proctor or without the opportunity to interact in real-time with the proctor. A qualified professional may act as a proctor who oversees a clinical continuing education course which may be used for classroom style continuing education credits. Cardiopulmonary resuscitation courses must provide hands-on training. All other continuing education requirements may be satisfied from webinars or classroom style learning that allows for real-time interaction between attendees and the proctor. The continuing education must include:

   a. ~~Two~~At least two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. ~~Two~~At least two hours of infection control.

c. A cardiopulmonary resuscitation course.

d. For registered dental anesthesia hygienist permitholders, at least two hours related to sedation or anesthesia, not including local anesthesia.

e. For registered dental restorative hygienist permitholders, at least two hours related to restorative dentistry.

f. For a dental hygienist practicing under general supervision, two hours related to medical emergencies.

g. No more than one hour related to practice management or administration.

4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement. Certificates awarded for continuing education must indicate the name of the continuing education provider, date, and number of hours of continuing education. Certificates obtained from webinar courses must indicate the course was a webinar. For continuing education courses utilizing a proctor, the certificate of attendance must be signed by the proctor.

5. All dental hygienists must hold a current cardiopulmonary resuscitation certificate.

6. A dental hygienist who maintains a license on inactive status is not subject to continuing education requirements.

7. The board may audit the continuing education credits of a dental hygienist. Each licensee shall maintain certificates or records of continuing education activities from the previous renewal cycle. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in the continuing education activities listed. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

History: Effective January 1, 2011; amended effective April 1, 2015; July 1, 2017; April 1, 2021; July 1, 2022; October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.4

20-04-01-09. Volunteer license.

Between meetings of the board, the executive director of the board may review the volunteer license application and grant a provisional license if all the requirements are met. A volunteer license to practice dental hygiene in North Dakota, renewable annually by application to the board, may be granted when the following conditions are met:

1. The applicant was formerly licensed and actively practicing in the state of North Dakota or another jurisdiction for at least three of the five years immediately preceding application, where the requirements are at least substantially equivalent to those of this state or the board determines that the applicant is qualified and satisfies the criteria specified under North Dakota Century Code section 43-20-01.2.

2. The applicant agrees to provide services without remuneration directly or indirectly in a board-approved setting.

3. The applicant holds a current cardiopulmonary resuscitation course certification.

4. The applicant has completed continuing education requirements of the board.

5. The applicant has made application for a volunteer license in a manner prescribed by the board.

6. The board may collect from the applicant the nonrefundable application and license fee prescribed by the board.

7. The board may apply such restrictions as it deems appropriate to limit the scope of the practice under the authority of the volunteer license.

History: Effective October 1, 2024.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-01.4

CHAPTER 20-05-01

20-05-01-01. Fees.

The board shall charge the following nonrefundable fees:

1. For dentists:

a.	License by examination application fee	~~$485.00~~$515.00
b.	License by credential review application fee	~~$1,320.00~~$1,420.00
c.	Renewal fee	~~$440.00~~$475.00
d.	Late fee	~~$440.00~~$475.00
e.	Temporary license application and license fee	~~$275.00~~$300.00
f.	Volunteer license application and license fee	$25.00
g.	Inactive status application fee	$40.00
h.	Inactive status annual renewal fee	$40.00
i.	Inactive status reinstatement fee	$485.00
j.	Dermal fillers and botulinum toxin permit	~~$200.00~~$225.00
k.	Dermal fillers and botulinum toxin permit renewal	~~$100.00~~$125.00

2. For dental hygienists:

a.	License by examination application fee	~~$220.00~~$240.00
b.	License by credential review application fee	~~$495.00~~$535.00
c.	Renewal fee	~~$165.00~~$185.00
d.	Late fee	~~$165.00~~$185.00
e.	Inactive status application fee	$42.00
f.	Volunteer license application and license fee	$25.00
g.	Inactive status annual renewal fee	$40.00
h.	Inactive status reinstatement fee	$220.00

3. For registered ~~and qualified~~ dental assistants:

a.	Application fee	~~$145.00~~$155.00
b.	Renewal fee	~~$110.00~~$120.00
c.	Late fee	~~$110.00~~$120.00

4. For dentist anesthesia permits:

a.	Application fee	~~$200.00~~$225.00
b.	Inspection fee	actual cost
c.	Renewal fee	$200.00

d. Late fee ~~$200.00~~$225.00

5. For a duplicate license, registration, or permit $50.00

6. For qualified dental assistants

a. Application fee $155.00

b. Renewal fee $120.00

c. Late fee $120.00

History: Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2008; January 1, 2011; April 1, 2015; April 1, 2021; October 1, 2024.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-01.4, 43-20-06, 43-20-13.1, 43-20-13.2, 43-28-11, 43-28-16.2, 43-28-17, 43-28-24, 43-28-27

TITLE 33.1

DEPARTMENT OF ENVIRONMENTAL QUALITY

OCTOBER 2024

CHAPTER 33.1-20-01.1

33.1-20-01.1-03. Definitions.

The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23.1-08, except:

1. "Acre foot" means the volume of one acre [0.40 hectares] of surface area to a depth of one foot [30.5 centimeters].

2. "Agricultural processing operation" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.

3. "Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.

4. "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

5. "Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.

6. "Area-capacity curves" means graphic curves that readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

7. "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the solid waste management unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

8. "Beneficial use" means use of a solid waste or residual either in a manufacturing process to make a product or as a substitute for a raw material or product provided such use of the solid waste does not adversely impact human health or the environment. Beneficial use of CCR

must meet the conditions in subdivisions a through d and beneficial use of other solid wastes or residuals must meet conditions in subdivisions a through c.

a. The solid waste or residual must provide a functional benefit;

b. The solid waste or residual must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

c. The use of the solid waste or residual must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the solid waste or residual is not used in excess quantities; and

d. When unencapsulated use of CCR or residual involving placement on the land of twelve thousand four hundred tons or more in nonroadway applications, the user shall demonstrate and keep records, and provide such documentation upon request, that environmental releases to ground water, surface water, soil and air are comparable to or lower than those from analogous products made without solid waste or residual, or that environmental releases to ground water, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

9. "Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste for which closure is complete.

10. "Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.

11. "Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. Coal combustion residuals is a subset of special waste.

12. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities exclusive of household waste, industrial waste, and special waste.

13. "Compliance boundary" means the vertical planar surface that extends downward into the uppermost aquifer and that circumscribes the waste management units at which water quality standards or maximum concentration limits apply.

14. "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

15. "Contouring" means the placement of material to provide a continuous downward slope on the surface of a drainage area, except for erosion control features (e.g., swales, contour banks).

16. "Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "rolloffs").

17. "Dike" means an embankment, berm, or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

18. "Displacement" means the relative movement of any two sides of a fault measured in any direction.

19. "Downstream toe" means the junction of the downstream slope or face of the surface impoundment with the ground surface.

20. "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading, and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive solid waste from off-site.

21. "Encapsulated beneficial use" means a beneficial use of solid waste that binds the solid waste into a solid matrix that minimizes its mobilization into the surrounding environment.

22. "Engineered slope protection measures" means nonvegetative cover systems, which include rock riprap, concrete revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

23. "Existing unit" means a landfill or surface impoundment or a portion thereof that is receiving or has received solid waste for which closure has not been completed.

24. "Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.

25. "Factor of safety (safety factor)" means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

26. "Farming operation" means the production or raising of crops or livestock. Production or raising of crops or livestock includes the following:

    a. Cultivating, growing, or harvesting agricultural crops;

    b. Breeding, feeding, grazing, or finishing of livestock; or

    c. Raising or producing poultry or unprocessed poultry products, unprocessed milk or dairy products, unprocessed livestock products such as wool, or unprocessed fruits, vegetables, or other horticultural products.

    The term "farming operation" includes any animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03.1 that recycles or applies its manure and other residual agricultural material to soils as recycled agricultural material, but does not include an animal feeding operation that generates manure or other residual agricultural material that is discarded as agricultural waste. The term "farming operation" does not include any processing of crops, livestock, or other agricultural products by an agricultural processing operation.

27. "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

28. "Final cover" means any combination of compacted or uncompacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.

29. "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by an one hundred-year flood.

30. "Flood hydrograph" means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

31. "Freeboard" means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

32. "Free liquid" means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The environmental protection agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.

33. "Fugitive dust" means solid airborne particulate matter that contains or is derived from solid waste, emitted from any source other than a stack or chimney.

34. "Garbage" means putrescible solid waste such as animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, and processing plants.

35. "Gas condensate" means the liquid generated as a result of gas recovery processes at a landfill disposal unit.

36. "General permit" means a regional or statewide permit issued by the department for a specified category of beneficial use, processing or treatment of solid waste, the terms and conditions of which allow a person to operate under the permit if the terms and conditions of the permit and requirements of this article are met.

37. "Grassy vegetation" means vegetation that creates a continuous dense cover that prevents erosion and deterioration of the surface of the slope or pertinent surrounding areas, thereby preventing deterioration of the surface and develops shallow roots that do not penetrate the slopes or pertinent surrounding areas of the solid waste unit to a substantial depth and do not introduce the potential of internal erosion or risk of uprooting.

38. "Ground water" means water below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure. This definition does not apply to the regulation of CCR.

39. "Hazardous waste" has the meaning given by North Dakota Century Code section 23.1-04-02 and further defined in North Dakota Administrative Code chapter 33.1-24-02.

40. "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at eleven thousand seven hundred years before present, to present.

41. "Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.

42. "Hydraulic conductivity" means the rate at which water can move through a permeable medium (i.e., the coefficient of permeability).

43. "Incinerator" has the meaning given by section 33.1-15-01-04.

44. "Incised surface impoundment" means a surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of solid waste

entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

45. "Industrial waste" has the same meaning as in North Dakota Century Code section 23.1-08-02. Such waste may include residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; textile manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.

46. "Inert waste" means nonputrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; metal; tree branches; bottom ash from coal-fired boilers that is not CCR; and waste coal fines from air pollution control equipment.

47. "Inflow design flood" means the flood hydrograph that is used in the design or modification of the surface impoundments and its appurtenant works.

48. "Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.

49. "Landfill" has the meaning given by North Dakota Century Code section 23.1-08-02 and that is not a land treatment unit, surface impoundment, injection well, or waste pile.

50. "Lateral expansion" means a horizontal extension of the waste boundaries of an existing solid waste disposal unit. This applies to an existing CCR landfill or existing CCR surface impoundment for lateral expansions made after October 19, 2015.

51. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

52. "Leachate removal system" means any combination of landfill base slopes, liners, permeable zones, pipes, detection systems, sumps, pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.

53. "Liquefaction factor of safety" means the factor of safety (safety factor) determined using analysis under liquefaction conditions.

54. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include manmade materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

55. "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees Celsius [77 degrees Fahrenheit].

56. "Municipal waste incinerator ash" means the residue produced by the incineration or gasification of municipal waste.

57. "Nutrient management plan" means a plan prepared by any animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative

Code chapter 33.1-16-03, or by any agricultural processing operation. This plan ~~shall~~must be submitted to the department for approval and describe the method and schedule by which the recycled agricultural materials generated or stored by the operation are recycled or applied to the land at appropriate agronomic rates as nutrients or fertilizers, rather than discarded as agricultural waste. An approved nutrient management plan must address water pollution, odor, and other environmental and public health problems that are relevant because of size, location, or other environmental factors, and may include the following elements:

a. Recycled agricultural material handling and storage, including construction and maintenance of buildings, feedlots, collection systems, storage systems with adequate storage and integrity, and diversion of runoff and flowing surface water from contact with the storage systems and the recycled agricultural material;

b. Land application of recycled agricultural material, including soils testing, transportation, timing and methods of application, and nutrient management;

c. Conservation management practices, including injection or tillage of the recycled agricultural materials into the soils, crop residue and pasture management practices, use of conservation buffers, and other conservation practices that prevent water pollution from land application of recycled agricultural materials;

d. Recordkeeping and submittal of an annual report to the department by March first of each year, including the place, date, and amount of recycled agricultural material applied per acre, plus records of any testing;

e. Feed management; and

f. Other utilization options where residual agricultural materials are recycled.

58. "Operator" means the person responsible for the overall operation of a facility or part of a facility.

59. "Owner" means the person who owns a facility or part of a facility.

60. "Pilot project" means a restricted solid waste operation at an existing or new facility where the specific purpose is to demonstrate or test new and innovative methods of treating, handling, or beneficially using solid waste materials or investigate an alternative solid waste feedstock for a previously recognized beneficial use.

61. "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

~~61.~~62. "Postclosure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform postclosure activities.

~~62.~~63. "Probable maximum flood" means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

~~63.~~64. "Processing" means an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.

~~64.~~65. "Qualified environmental professional" means a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases to the environment. Such a person must:

a. Be licensed or certified by a nationally recognized accreditation program (contingent upon prior approval by the department) and have the equivalent of three years of full-time relevant experience; or

b. Have a baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five years of full-time relevant experience.

~~65.~~66. "Qualified professional engineer" means a professional engineer, as defined in subsection 9 of North Dakota Century Code section 43-19.1-02, who is qualified by education, technical knowledge, and experience to make the specific technical certifications required under this article. Professional engineers making these certifications must be currently licensed in the state of North Dakota.

~~66.~~67. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33.1-10.

~~67.~~68. "Recognized and generally accepted good engineering practices" means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

~~68.~~69. "Recyclable material" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.

~~69.~~70. "Recycled agricultural material" means agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing, or other similar agricultural activities. Recycled agricultural materials also include:

a. Material, including manure, generated by any animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03 that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan; or

b. Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan.

Recycled agricultural material does not include agricultural waste that is discarded as garbage, refuse, or other solid waste.

~~70.~~71. "Recycling" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.

~~71.~~72. "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon and ground water) which can be expected to exhibit the average properties of the universe or whole.

~~72.~~73. "Runoff" means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.

~~73.~~74. "Run-on" means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.

~~74.~~75. "Sand and gravel pit or quarry" means an excavation for the extraction of aggregate, minerals, or metals. The term sand and gravel pit or quarry does not include subsurface or surface coal mines.

~~75.~~76. "Scavenging" means uncontrolled removal of solid waste materials from any solid waste management facility.

~~76.~~77. "Sequential partial closure" means bringing discrete, usually adjacent, portions of a disposal facility to elevation and grade in an orderly, continually progressing process as part of the operations of the facility for facilitating closure.

~~77.~~78. "Sludge" means solid waste in a semisolid form consisting of a mixture of solids and water, oils, or other liquids.

~~78.~~79. "Solid waste management unit" means any discernible unit at which solid wastes have been placed at any time, for the management of solid waste, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A solid waste management unit may consist of multiple components that serve the same function within a facility, such as multiple surface impoundments or waste holding tanks.

~~79.~~80. "Static factor of safety" means the factor of safety (safety factor) determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

~~80.~~81. "Structural components" means liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood controls systems, and any other component used in the construction and operation of the solid waste management unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

~~81.~~82. "Suitable plant growth material" means that soil material (normally the A and the upper portion of B horizons which are dark colored due to organic staining) which, based upon a soil survey, is acceptable as a medium for plant growth when respread on the surface of regraded areas.

~~82.~~83. "Surface impoundment" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of leachate, solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal.

~~83.~~84. "Technologically enhanced naturally occurring radioactive material (TENORM)" means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.] and relevant regulations implemented by the United States nuclear regulatory commission.

~~84.~~85. "Transfer station" means a site or building used to transfer solid waste from a vehicle or a container, such as a rolloff box, into another vehicle or container for transport to another facility.

~~85.~~86. "Treatment" means a method or process designed to change the physical, chemical, or biological character or composition of a solid waste or leachate so as to neutralize the waste

or leachate or so as to render the waste or leachate safer for public health or environmental resources during transport, storage, beneficial reuse, or disposal. The term does not include resource recovery.

~~86.~~87. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the solid waste management unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.

~~87.~~88. "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

~~88.~~89. "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

~~89.~~90. "Vegetative height" means the linear distance between the ground surface where the vegetation penetrates the ground surface and the outermost growth point of the vegetation.

~~90.~~91. "Waste boundary" means a vertical surface located at the hydraulically downgradient limit of the solid waste management unit. The vertical surface extends down into the uppermost aquifer.

~~91.~~92. "Waste pile or pile" means any noncontainerized accumulation of nonflowing solid waste.

~~92.~~93. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

~~93.~~94. "Woody vegetation" means vegetation that develops woody trunks, root balls, or root systems that can penetrate the slopes or pertinent surrounding areas of the solid waste unit to a substantial depth and introduce the potential of internal erosion or risk of uprooting.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03, 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 61-28-04; S.L. 2017, ch. 199, § 23

33.1-20-01.1-04. Care and disposal of solid waste.

1. Any person who owns or operates any premises, business establishment, or industry is responsible for the solid waste management activities, such as storage, transportation, resource recovery, or disposal, of solid waste generated or managed at that person's premises, business establishment, or industry.

2. ~~No solid~~Solid waste may not be delivered to a facility ~~which~~that is not in compliance with this article or abandoned upon any street, alley, highway, public place, or private premises.

3. Solid waste must be stored, collected, and transported in a manner that provides for public safety, prevents uncontrolled introduction into the environment, and minimizes harborage for insects, rats, or other vermin.

4. Except in unincorporated areas of this state, household waste must be removed from the premises or containers at regular intervals not to exceed seven days and transported to a solid waste management unit or facility.

5. Used oil, lead-acid batteries, major appliances, wind turbine blades, and scrap metal may not be collected or transported for disposal to any solid waste disposal unit or facility unless such unit or facility has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-04.1. Storage containers and areas.

All household wastes are to be stored in the manner provided by this section.

1. **Storage containers.**

   a. Single-use containers.

      (1) Single-use containers, such as paper or plastic bags, liners, or cartons, must have a maximum capacity of thirty-two gallons [121.1 liters] unless otherwise allowed by the local unit of government, must be leakproof and must be puncture resistant. Paper bags must be specifically designed for solid waste containment or disposal.

      (2) Paper containers may not be used for outside storage unless supported by wall-mounted or freestanding holders or frames. When filled, the container top must be tied, stapled, or crimped to completely confine the contents.

   b. Residential containers.

      (1) Reusable residential containers must be rigid and durable, nonabsorbent, watertight, tapered, corrosion resistant, rodentproof, easily cleanable, and have a flytight cover. These containers must be covered except when adding or removing waste.

      (2) Residential containers must have a maximum capacity of thirty-two gallons [121.1 liters] if collected manually. Residential containers used with automated collection vehicles may be larger than thirty-two gallons [121.1 liters].

      (3) When residential containers are kept in the outdoor environment, storage racks or supports must be provided to minimize corrosion, to prevent breeding of insects, and to prevent rodent harborage. The bottom of the racks or supports must be at least one foot [30.5 centimeters] above ground level. The covers may be chained to the rack or to a permanent structure.

   c. Bulk containers. Bulk containers or detachable containers, such as dumpsters, must be constructed of rigid and durable, rust-resistant and corrosion-resistant material, be equipped with tight-fitting lids or doors to prevent entrance of insects or rodents, and must be leakproof. Lids and covers must be closed except when adding or removing waste.

2. **Enclosed storage areas.**

   a. Storage rooms, buildings, or areas must be of rodentproof construction which is readily cleanable with proper drainage.

   b. Storage rooms or buildings, if not refrigerated, must be adequately vented and all openings must be screened.

3. **Maintenance of containers and enclosed storage areas.**

a. All containers and enclosed areas for storage of solid waste must be maintained in good repair and in a manner as necessary to prevent litter, nuisances, odors, insect breeding, and rodents.

b. Containers that are broken or otherwise fail to meet requirements of this section must be replaced with complying containers.

4. **Unconfined waste.** Unless special service or special equipment is provided by the collector for handling unconfined waste materials such as trash, brush, leaves, tree cuttings, newspapers and magazines, and other debris for manual pickup and collection, these materials must be in securely tied bundles or in boxes, ~~sacks~~bags, or other receptacles and solid waste so bundled may not exceed fifty pounds [22.7 kilograms] in weight and four feet [1.8 meters] in length. Such wastes may not be placed out for collection twenty-four hours before scheduled pickup.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-05. Collection and transportation vehicles.

1. Vehicles used for the commercial collection and transportation of any residue, sludge, agricultural, inert, industrial waste, or special waste must be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom. Where spillage does occur, the collector or transporter shall immediately return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area.

2. Vehicles used for the commercial collection and transportation of regulated infectious waste, household waste, or municipal waste incinerator ash must be fully leakproof and fully enclosed or covered to prevent scattering of material. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit. ~~Any spilled material must be immediately returned to the transport vehicle or container and, if necessary, the area must be cleaned and decontaminated~~If spillage does occur, the collector or transporter immediately shall return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area.

3. The cargo-carrying body of a vehicle used for commercial collection or transportation of solid waste must be maintained in good repair and in sanitary condition.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-06. Hazardous waste.

The management of hazardous waste is regulated under article 33.1-24, except as otherwise provided in this article and section.

1. Containers having hazardous waste in excess of normal household quantities, which are not managed under article 33.1-24, must be marked to designate the content as toxic, explosive, or otherwise hazardous in a manner designed to give adequate warning to any person conducting the collection, transport, resource recovery, or disposal of the waste.

2. Every person who transports hazardous waste shall have a valid solid waste transporters permit, unless exempted by section ~~33.1-20-02-01~~33.1-20-02.1-01.

3. Owners and operators of disposal, resource recovery, or solid waste processing facilities ~~may not~~ knowingly may not store, treat, handle, or dispose of hazardous waste in amounts that are in excess of quantities normally in household waste, unless the requirements of article 33.1-24 are met.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-14. Variances.

Whereupon written application the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship or would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe. The department ~~will~~may not approve variances for CCR facilities ~~without concurrence from the United States environmental protection agency~~or the handling of CCR.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-02.1
PERMIT PROVISIONS AND PROCEDURES

Section
33.1-20-02.1-01 Solid Waste Management Permit Required
33.1-20-02.1-02 Permits by Rule
33.1-20-02.1-03 General Permits for Beneficial Use, Processing, or Treatment of Solid Waste
33.1-20-02.1-04 Permit Compliance
33.1-20-02.1-05 Record of Notice
33.1-20-02.1-06 Property Rights
33.1-20-02.1-07 Permit Modification, Suspension, or Revocation
33.1-20-02.1-08 Renewal of Permit
33.1-20-02.1-09 Transfer of Permit
33.1-20-02.1-10 Solid Waste Pilot Projects

33.1-20-02.1-01. Solid waste management permit required.

Every person who treats or transports solid waste or operates a solid waste management unit or facility is required to have a valid permit issued by the department, unless the activity is an emergency, exemption, or exception as provided in this section.

1. If the department determines an emergency exists, it may issue an order citing the existence of such emergency and require that certain actions be taken as necessary to meet the emergency in accordance with the provisions of North Dakota Century Code section 23.1-08-19.

2. A solid waste management permit is not required for the following activities or facilities:

   a. Backyard composting of leaves, grass clippings, or wood chips;

   b. A collection point for parking lot or street sweepings;

   c. Collection sites for wastes collected and received in sealed plastic bags from such activities as periodic cleanup campaigns for cities, rights of way, or roadside parks;

   d. Onsite incinerators used by hospitals, clinics, laboratories, or other similar facilities solely for incineration of commercial waste or infectious waste generated onsite;

   e. Rock and dirt fills that receive any combination of rock, dirt, or sand;

   f. Surface impoundments for storage, handling, and disposal of oil and gas exploration and production wastes on a lease or area permitted through the North Dakota industrial commission under North Dakota Century Code section 38-08-04;

   g The disposal into the mine spoils of the following wastes generated in the mining operation:

      (1) Rock, boulders, and dirt; and

      (2) Trees and brush.

   h. The disposal of the following mining operation wastes into areas designated in a surface coal mining permit issued by the North Dakota public service commission for such disposal:

      (1) Inert waste from inspected farmsteads;

      (2) Wood materials including pallets, lumber, lathe, cablespools, and fenceposts;

(3) Brick, concrete block, and cured concrete; and

(4) Plastic material and pipe.

i. A pilot project approved by the department under section 33.1-20-02.1-10.

3. A permit for the transportation of solid waste is not required by persons who:

a. Transport solely their own waste to a solid waste management unit or facility; or

b. Transport waste entirely within a facility regulated under this article or entirely on their property.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-03. General permits for beneficial use, processing, or treatment of solid waste.

1. Authorization for a general permit:

a. The department may issue general permits on a regional or statewide basis for a category of beneficial use, processing, or treatment of solid waste, including recyclable materials, if the following are met:

(1) The wastes included in the category are generated by the same or substantially similar operations and have the same or substantially similar physical characteristics and chemical composition. If wastes are not the same or substantially similar and are blended for use, the blend ~~shall~~must be consistently reproduced with the same physical characteristics and chemical composition.

(2) The wastes included in the category are proposed for the same or substantially similar beneficial use, processing, or treatment operations.

(3) The activities in the category can be regulated adequately ~~regulated~~ utilizing standardized conditions without harming or presenting a threat of harm to human health, safety, or the environment. At a minimum, the use of the waste as an ingredient in an industrial process or as a substitute for a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing; and

(4) The activities in the category are in accordance with the requirements and purposes of this article, and do not pose a threat of harm to human health, safety, or the environment.

b. ~~A person~~The department does not require a person to have an individual solid waste permit under this article if the following are met:

(1) The beneficial use, processing, or treatment activities are conducted in accordance with the terms and conditions of the applicable general permit; and

(2) The person conducting the beneficial use, processing, or treatment activities has registered with the department for coverage under the general permit, if registration is required by the general permit.

c. Notwithstanding subdivision b, the department may require a person authorized by a general permit to apply for, and obtain, an individual permit ~~when~~if the person is not in compliance with the conditions of the general permit or is conducting an activity that, in

the department's determination, may present a threat of harm to human health, safety, or the environment.

d. The department may issue a new general permit upon its own motion or upon an application from a person.

e. The department may impose a fee for a new general permit application or for registration or application for coverage under an existing general permit, based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance with the permit or registration certificate.

f. The department may modify, suspend, revoke, or reissue general permits or coverage under a general permit as it deems necessary to prevent harm or threat of harm to human health, safety, or the environment.

g. A person that beneficially uses, processes, or treats solid waste under a general permit shall comply with the terms and conditions of the general permit and requirements of this article to the same extent as if the activity were covered by an individual permit.

h. A person operating under a general permit has the burden of proving that the waste and activity are consistent with the general permit.

i. Persons applying for coverage or operating under a general permit are subject to all local zoning requirements.

j. General permits may not be issued to a CCR facility to treat or dispose of CCR.

2. Application for a new general permit. An application from a person for the issuance of a new general permit ~~shall~~must be submitted on a form provided by the department and must contain the following:

a. A description of the type of solid waste to be covered by the general permit, including physical and chemical characteristics of the waste. The chemical description ~~shall~~must contain an analysis of a sufficient number of samples of solid waste in the same waste type to accurately represent the range of physical and chemical characteristics of the waste type;

b. A description of the proposed type of beneficial use, processing, or treatment activity to be covered by the general permit;

c. A detailed narrative and schematic diagram of the production or manufacturing process from which the waste to be covered by the general permit is generated;

d. For beneficial use general permits, proposed concentration limits for contaminants in the beneficially used waste, and a rationale for those limits. At a minimum, the use of the waste as an ingredient in an industrial process or as a substitute for a raw material or a commercial product may not present a greater harm or threat of harm than the use of the product or ingredient which the waste is replacing;

e. For general permits that involve beneficial use of solid waste, a detailed demonstration of the suitability of the waste for the proposed beneficial use, which must include:

(1) A demonstration that the physical characteristics and chemical composition of the solid waste contributes to the proposed beneficial use and does not interfere with the proposed beneficial use;

(2) If the waste is to be used as a substitute for a commercial product, a demonstration that the waste can perform the desired functions of the commercial product, and that the waste meets or exceeds all applicable national, state, local, or industry standards or specifications for the material for which the waste is being substituted;

(3) If the waste is to be used as a raw material for a product with commercial value, a demonstration that the waste will contribute significant properties or materials to the end product, and that the waste meets or exceeds all applicable national, state, local, or industry standards or specifications for the material for which the waste is being substituted;

(4) If the waste is to be used in general roadway application or highway construction, a demonstration that approval will be granted by the department of transportation, if applicable, for the use of the waste for the intended application;

(5) If the waste is to be used as a construction material, soil substitute, soil additive, or antiskid material, or is to be otherwise placed directly onto the land, an evaluation of the potential for adverse public health and environmental impacts from the proposed use of the solid waste. The evaluation ~~shall~~must identify the constituents of the waste which may present the potential for adverse public health and environmental impacts, and the potential pathways of human exposure to those constituents, including exposure through ground water, surface water, air, and the food chain; and

(6) If the waste is to be used as a construction material, a description of the construction activities and detailed timelines for the prompt completion of the construction activities.

f. If solid wastes are blended for use, a demonstration that each waste results in a beneficial contribution to the use of the mixed waste and that the consistency of the blend will be maintained. The applicant shall specify the quantities and proportions of all materials included in the blended waste, and the mixture shall meet appropriate standards for use;

g. Payment of the fee specified in chapter 33.1-20-15 for a new general permit; and

h. Any other relevant information requested by the department.

3. Public notice and review period.

a. The department shall publish notice of receipt of an application for a new general permit on its official website when the department determines the application is ~~determined to be~~ substantially complete.

b. The department shall follow the same review and public notice procedures for new general permit applications as for individual permit applications in section 33.1-20-03.1-03.

c. The department shall publish all finalized and approved new general permits on its official website and list all persons who have registered for coverage under that general permit.

4. Contents of general permits. Each new general permit issued by the department must include, at a minimum:

a. A clear and specific description of the category of waste and the category of beneficial use, processing, or treatment of solid waste eligible for coverage under the general permit;

b. A brief description of the reasons for the department's determination that the category of beneficial use, processing or treatment is eligible for coverage under the general permit;

c. Registration or determination of applicability requirements and the fee, if any, imposed on registrants or applicants for coverage under the general permit;

d. A set of terms and conditions governing the beneficial use, processing or treatment of solid waste covered by the general permit that the department determines are necessary to ensure compliance with this article, including provisions for the protection of ground water. At a minimum, the conditions must include:

(1) Limits on the physical and chemical properties of waste that may be beneficially used, processed, or treated and a requirement that persons who conduct activities authorized by the general permit shall notify the department immediately on forms provided by the department, of a change in the physical or chemical properties of the solid waste, including leachability;

(2) The department's right of access to the site or facility where permitted activities are conducted for inspections as provided in North Dakota Century Code section 23.1-08-18;

(3) An effective date and a fixed permit term that may not exceed ten years from the effective date;

(4) A requirement that a person operating under the permit shall notify the department within the time stated in the permit and, if no time is stated no later than thirty days, in writing, of any changes in the following:

(a) The company's name, address, owners, operators, and responsible officials.

(b) Land ownership where the general permit is implemented.

(c) The physical and chemical characteristics of the solid waste.

(d) The generators of the solid waste and the manufacturing process that generates the solid waste.

(e) The status of any permit issued to the permittee or any agent of the permittee engaged in activities under the permit by the department.

(5) A requirement that the activities conducted under the authorization of a general permit must be conducted in accordance with the permittee's application, except to the extent that a general permit may state otherwise;

e. The general permit may include a requirement that persons that conduct activities authorized by the general permit shall submit to the department periodic reports, analyses of waste and other information to ensure the quality of the waste to be beneficially used or processed does not change; and

f. The general permit may include a requirement for financial assurance to remove materials remaining after closure or for emergency response site cleanup, based on the volume, physical, or chemical characteristics, or treatment methods of the materials covered under the general permit.

5. Coverage under a general permit.

a. A person is authorized to operate under a general permit if one of the following occurs:

(1) No registration required for coverage. The applicable general permit does not require persons to register with the department prior to operating under the general permit, and the person is operating in accordance with all terms of the general permit; ~~or~~

(2) Registration required for coverage. The applicable general permit requires persons to register with the department prior to operating under the general permit. The department ~~will~~shall notify the person that has registered that they may begin to operate in accordance with the terms of the general permit; or

(3) Application required for coverage. The applicable general permit requires persons to apply for and obtain authorization to operate, including site approval, from the department prior to operating under the general permit, and the department has made this authorization.

b. Except as provided in subdivision c, as a condition of each general permit, the department may require persons seeking coverage under the general permit to register or apply with the department within a specified time period. New operations not in existence before the issuance of a general permit shall register prior to conducting the activity authorized by the general permit.

c. For general permits where the solid waste is to be used as a construction material, antiskid material~~-~~, or otherwise placed directly onto the land, as a condition of the general permit, the department may require persons who intend to operate under the general permit to apply for and obtain authorization from the department prior to conducting the activity authorized by the general permit. The department may impose the requirement for prior authorization on other general permits for beneficial use, processing, or treatment activities if the department determines the condition is necessary to prevent harm or a threat of harm to the health and safety of people or the environment.

d. If required by the general permit, the registration or application must include:

(1) The name and address of the person conducting the activity covered by the general permit;

(2) A description of each waste that will be beneficially used or processed in accordance with the general permit;

(3) The location where the general permit will be implemented;

(4) A description of the proposed method of processing or beneficial use of the waste;

(5) An analysis that is in accordance with the general permit, if the general permit requires a registrant or applicant to chemically analyze each waste to be processed or beneficially used;

(6) The name or number of the general permit being utilized for the activity;

(7) A demonstration that the activities the person intends to conduct are authorized by the general permit;

(8) A disclosure statement as required by North Dakota Century Code section 23.1-08-17;

(9) A signed statement by the person conducting the activity authorized by the general permit, on a form prepared by the department, which states that the person agrees

to accept the conditions imposed by the general permit for beneficial use, processing, or treatment of solid waste under the general permit;

(10) A registration or application fee if required by the general permit; and

(11) Any other relevant information requested by the department.

e. The department may amend, suspend, or revoke coverage under a general permit if a person authorized to conduct solid waste activities under a general permit is not in compliance with all of the permit conditions or other requirements of this article.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03, ~~23-08-10~~23.1-08-10; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09, ~~23-08-10~~23.1-08-10; S.L. 2017, ch. 199, § 1

33.1-20-02.1-07. Permit modification, suspension, or revocation.

1. A permit may be modified, suspended, revoked, or denied by the department for reasons pertaining to: circumstances that do not meet the purpose and provisions of this article, the provisions of the permit, or the plans and specifications submitted as part of the application for permit; or, violations of any applicable laws or rules. The department shall provide written notice to the permittee.

2. If a change occurs during the life of a permit for transporting solid waste (such as the number or type of vehicles used to transport waste, the service area, the waste categories transported, or the solid waste management facilities ~~use~~used), the permittee shall notify the department in writing within thirty days.

3. If a change occurs during the life of a permit for a solid waste management unit or facility, as specified in subsection 4, the permittee shall apply for and receive a modification of the permit prior to enacting the change. Routine maintenance, repair, or replacement, or an increase in hours of operations may not be considered a construction or operation change. Changes, including frequency of monitoring and reporting, waste sampling or analysis method, schedules of compliance, and revised cost estimates for closure and postclosure may be effected through written notice to and approval by the department.

4. The following changes at a permitted solid waste management unit or facility require a major permit modification:

   a. A change to the facility boundaries or acreage;

   b. An increase in average daily solid waste specified in the permit or permit application, calculated by weight or volume for any twelve consecutive months;

   c. A change in the solid waste characteristics;

   d. An increase or decrease in finished height or finished slope of a landfill;

   e. Any increase in landfill trench or excavation depth;

   f. A change in facility site development which will result in impact to or encroachment into a one hundred-year floodplain, a ravine, a wetland, or a drainageway;

   g. A change in site drainage or management of runoff or run-on;

   h. A change in facility site development which will result in disposal of wastes closer to site boundaries than originally approved;

i. The addition of solid waste management units, which, if sited independently, would require a permit; or

j. Other changes that could have an adverse effect on the safety, health, or welfare of nearby residents, property owners, or the environment.

5. An application for modification of a solid waste management unit or facility must follow the procedures and provisions of section 33.1-20-03.1-02.

History: Effective January 1, 2019~~.~~; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-02.1-09. Transfer of permit.

1. An application for the transfer of a solid waste facility permit to a new owner must meet the requirements of this section. The original permittee shall be responsible for all conditions of the permit, including financial assurance, until the permit transfer is approved by the department. The permit expiration date must remain in effect.

   a. An application for a permit transfer must be submitted on forms available from the department.

   b. The application must include an application processing fee specified in chapter 33.1-20-15.

   c. An application for permit transfer must be submitted to the department at least thirty days before a change of ownership occurs.

   d. The applicant shall certify that the applicant shall maintain compliance with all conditions, operating plans, and facility specifications associated with the permit.

   e. The applicant shall submit a disclosure statement as required by North Dakota Century Code section 23.1-08-17.

   f. The application must demonstrate financial assurance that meets the requirements of chapter 33.1-20-14 prior to approval of the permit transfer by the department.

   g. The applicant shall provide documentation of compliance with local zoning requirements.

2. An application for the transfer of a solid waste transporter's permit to a new owner must meet the requirements of this section. The permit expiration date must remain in effect.

   a. An application for a permit transfer must be submitted on forms available from the department.

   b. The application must include an application processing fee specified in chapter 33.1-20-15. Decals for individual solid waste transport vehicles covered under the permit will remain valid until the permit expiration date.

3. The department shall notify the county where a solid waste facility is located of the transfer of any permit to a new owner and shall provide public notice of permit transfers on the department's website.

History: Effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2023, ch. 254, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09

33.1-20-02.1-10. Solid waste pilot projects.

The department may approve applications for solid waste pilot projects that meet the requirements of this section.

1. An applicant shall submit a request for a solid waste pilot project in writing to the department and receive written approval from the department before commencement of any pilot project activities. A pilot project must not exceed two years in length. Persons applying for approval of a pilot project are subject to all local zoning requirements. The department shall maintain a list of all approved solid waste pilot projects and their status on the department's website.

2. Request for pilot project. A pilot project request must include, at a minimum, the following information:

   a. General data.

      (1) Names, addresses, and telephone numbers of the owner and/or operator;

      (2) Legal description, physical address, and mailing address of the proposed site;

      (3) Signage to ensure adequate traffic control and a telephone number to contact in case of an emergency;

      (4) A provision that the site must be attended or secured during business hours to control public access, prevent unauthorized vehicles, and illegal dumping of wastes; and

      (5) A site map drawn to a common, recognized engineering scale illustrating all proposed roads, fencing, existing and proposed structures, adjacent properties, storm water control and containment features, and processing and storage areas.

   b. Project overview.

      (1) Objectives of the proposed pilot project;

      (2) How the pilot project will integrate with an existing or proposed facility;

      (3) The methodology and protocol to be used for beneficial use or treatment;

      (4) What data will be gathered and what level of results will determine whether the pilot project is successful;

      (5) Any analysis to be performed; and

      (6) Pilot project time frame. A pilot project may not exceed two years in length from department approval.

   c. Operations data.

      (1) A description of all feedstock types;

      (2) A description of any bulking materials;

      (3) A description of any liquid wastes;

      (4) A description of proposed use for finished materials and disposition of unfinished materials;

(5) Anticipated volume of all solid and liquid materials to be received and produced during the duration of the pilot project;

(6) A detailed description of the beneficial use or treatment operations;

(7) Access control;

(8) Odor management plan;

(9) Fire protection plan that is in accordance with the local fire codes and requirements;

(10) A description of storm water run-on, runoff, and containment features supported by calculations demonstrating that these features are able to control, at a minimum, a twenty-five-year twenty-four-hour rain event, if precipitation contacts any soluble waste materials;

(11) Recordkeeping for all operational activities;

(12) A description of the work area; and

(13) A contingency plan addressing actions required in the event unacceptable materials are discovered, contamination or discharge of waters from the site occurs, or nuisance conditions occur onsite or offsite.

d. Environmental issues. If the pilot project operations are not conducted indoors or in an area sheltered from the weather, an evaluation of the potential for impacts to ground water and surface water must be provided.

e. Closure plan. A closure plan must be provided describing the actions necessary to adequately close the facility. Closure activities must be completed within thirty days after pilot project completion or termination.

3. Financial assurance. The department may include a requirement for financial assurance to remove materials remaining after closure or for emergency response site cleanup, based on the volume, physical or chemical characteristics, or treatment methods of the materials covered under the pilot project approval.

4. Interim report. For pilot projects that are approved for longer than one year, an interim report must be submitted to the department within thirty days after the first year of the pilot project approval. The interim report must include, at a minimum, the following information:

a. A summary of each objective and whether the objective has been achieved;

b. Identification of anticipated and unanticipated results;

c. Identification of any environmental impacts resulting from the pilot project;

d. Successes and failures; and

e. Data from test results of treated or processed material.

5. Project closeout report. A project closeout report must be submitted to the department within ninety days after pilot project completion or termination. The closeout report must include, at a minimum, the following information:

a. A summary of each objective and whether the objective was achieved;

b. Identification of anticipated and unanticipated results;

c. Identification of any environmental impacts resulting from the pilot project;

d. Successes and failures;

e. Data from test results of treated or processed material; and

f. A description of the closure of pilot project facility.

6. Conversion to permanent facility. To continue operation of a pilot project as a permanent approved solid waste management facility, the owner or operator shall apply for an individual permit or general permit within ninety days of pilot project completion in accordance with chapter 33.1-20-03.1.

History: Effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2023, ch. 254, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09

CHAPTER 33.1-20-03.1

33.1-20-03.1-01. Preapplication procedures.

1. For all new solid waste management facilities subject to the location standards of subsection 2 of section 33.1-20-04.1-01, a preapplication consisting of a preliminary facility description and a site assessment must be submitted to the department for review prior to submitting a permit application.

   a. The preliminary facility description must include, at a minimum, the location of the facility; a projection of capacity, size, daily waste receipts, type of waste accepted, years of operation, description of operation, and costs; and a discussion of the proposed facility's compliance with local zoning requirements ~~and the district waste management plan~~.

   b. The preliminary site assessment must include available information pertaining to the site's geology, hydrogeology, topography, soils, and hydrology based on existing information.

2. Within sixty days of receipt of a preapplication, the department ~~will~~shall provide written notification of approval or disapproval of the preapplication. If, after review of all information received, the department makes the determination to disapprove the preapplication, the department shall inform the applicant in writing of the reasons for the disapproval. If the preapplication is disapproved, the applicant may submit a new preapplication. A disapproval must be without prejudice to the applicant's right to a hearing before the department pursuant to North Dakota Century Code chapter 28-32.

3. An application may be filed only after approval of the preapplication and a finding by the department, after consultation with the state geologist and ~~state engineer~~department of water resources, that the site is geologically and hydrogeologically suitable for further evaluation and consideration.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09, 23.1-08-13, 23.1-08-17; S.L. 2017, ch. 199, § 23

33.1-20-03.1-02. Permit application procedures.

1. An application for a permit must be submitted on forms available from the department by any person desiring to transport solid waste or to establish, construct, or operate a solid waste management unit or facility.

2. The application for a permit must be prepared by the applicant or the applicant's authorized agent and signed by the applicant.

3. One print copy and one searchable electronic copy of the application and supporting documents ~~are required to~~must be submitted to the department with the fee specified in chapter 33.1-20-15.

4. ~~Upon~~Within thirty days of the submission of an application for a permit for a new solid waste management unit or facility or for facility changes listed in subsection 4 of section 33.1-20-02.1-07, the applicant shall publish a public notice indicating that an application has been submitted to the department. The public notice must indicate the type and location of the unit or facility and must be made by two separate publications in the official county newspaper in the county in which the site or operation is located. The applicant shall provide proof of publication by submitting to the department, within sixty days after the second publication of the notice, and affidavit from the publisher accompanied by a copy of the published notice, which shows the date of publication. ~~The department may require public notice for facility~~

~~changes listed in subsection 4 of section~~33.1-20-02.1-07~~-~~Failure to publish the public notice and provide proof of publication to the department will extend the permit review timeline in section 33.1-20-03.1-04 until proof of publication is received by the department.

5. Applicants proposing a solid waste management facility in a mining permit area for disposal of coal processing waste also must ~~also~~ file a copy of the application with the public service commission in accordance with subdivision a of subsection 1 of section 69-05.2-19-02.

6. Applications for a solid waste management unit or facility permit must include the following information where applicable:

   a. A completed application form, subsection 1;

   b. A description of the anticipated physical and chemical characteristics, estimated amounts, and sources of solid waste to be accepted, including the demonstration required by North Dakota Century Code section 23.1-08-14;

   c. The site characterization of section 33.1-20-13-01 and a demonstration that the site fulfills the location standards of section 33.1-20-04.1-01;

   d. Soil survey and segregation of suitable plant growth material;

   e. Demonstrations of capability to fulfill the general facility standards of section 33.1-20-04.1-02;

   f. Facility engineering specifications adequate to demonstrate the capability to fulfill performance, design, and construction criteria provided by this article and enumerated in this subdivision:

      (1) Transfer stations and drop box facilities, section 33.1-20-04.1-06.

      (2) Waste piles, section 33.1-20-04.1-07.

      (3) Resource recovery, section 33.1-20-04.1-08.

      (4) Land treatment, section 33.1-20-04.1-09 and chapter 33.1-20-09.

      (5) Non-CCR surface impoundments, section 33.1-20-04.1-09 and chapter 33.1-20-08.1.

      (6) Any disposal, section 33.1-20-04.1-09.

      (7) Inert waste landfill, chapter 33.1-20-05.1.

      (8) Municipal waste landfill, chapter 33.1-20-06.1.

      (9) Industrial waste landfill, chapters 33.1-20-07.1 or 33.1-20-10.

      (10) TENORM waste landfill, chapters 33.1-20-07.1 or 33.1-20-10 and 33.1-20-11.

      (11) Special waste landfill, chapter 33.1-20-07.1

      (12) CCR unit, chapter 33.1-20-08.

      (13) Municipal solid waste ash landfills, chapter 33.1-20-10.

      (14) Regulated infectious waste unit, chapter 33.1-20-12;

   g. The plan of operation of section 33.1-20-04.1-03;

h. Demonstration of the treatment technology of section 33.1-20-01.1-12;

i. The place where the operating record is or will be kept, section 33.1-20-04.1-04;

j. Demonstration of capability to fulfill the ground water monitoring standards, sections 33.1-20-08-06 or 33.1-20-13-02;

k. Construction quality assurance and quality control;

l. Demonstrations of capability to fulfill the closure standards, section 33.1-20-04.1-05 and otherwise provided by this article;

m. Demonstrations of capability to fulfill the postclosure standards, section 33.1-20-04.1-09 and otherwise provided by this article; and

n. A disclosure statement as required by North Dakota Century Code section 23.1-08-17.

7. Applications for a solid waste transporter's permit must include the following information:

a. A completed application form, subsection 1;

b. Description of the types of solid waste to be transported, approximate quantities, and anticipated collection sources;

c. A list of the anticipated solid waste management facilities that will store, treat, process, recycle, or dispose the solid waste;

d. Description of equipment and transportation spill prevention as required by section 33.1-20-01.1-05; and

e. A disclosure statement as required by North Dakota Century Code section 23.1-08-17.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09, 23.1-08-14, 23.1-08-17; S.L. 2017, ch. 199, § 23

33.1-20-03.1-03. Permit application review and action.

1. The department ~~will~~shall review the applications, plans, and specifications for solid waste transporters and for solid waste management facilities and information submitted as a result of the public notices.

2. Upon completion of the department's review, the application for permit ~~will~~must be approved, returned for clarification and additional information, or denied.

a. The basis for approval must be an application which demonstrates compliance with this article and North Dakota Century Code chapter 23.1-08.

b. The basis for return must be an application ~~which~~that is procedurally or technically incomplete, inaccurate, or deficient in detail, or ~~which~~that precludes an orderly review and evaluation. If the application is returned, the applicant may resubmit an application, complete with all necessary information to satisfy deficiencies. If the applicant does not resubmit an application within six months, the department shall consider the application withdrawn, and any subsequent application must be considered a new application.

c. The basis for denial must be an application ~~which~~that contains false, misleading, misrepresented, or substantially incorrect or inaccurate information; fails to demonstrate compliance with this article; proposes construction, installation, or operation of a solid

waste management unit or facility which will result in a violation of any part of this article; or is made by an applicant for whom an environmental compliance background review reveals any of the circumstances listed in subsection 14 of North Dakota Century Code section 23.1-08-03.

3. If the department makes a preliminary determination to issue a permit for a solid waste management facility or for a general permit, the department shall prepare a draft permit. The department may impose reasonable conditions upon a permit. The draft permit ~~will~~must be available for public review and comment after the department publishes a notice of its consideration to issue the permit.

   The public notice for a draft solid waste management facility permit must be published in the official county newspaper in the county in which the solid waste management unit or facility is or proposed to be located and in a ~~daily~~multiday newspaper of general circulation in the area of the facility. The public notice for a draft general permit must be published in all ~~daily~~multiday newspapers of general circulation in the state.

   a. Interested persons may submit written comments to the department on the draft permit within thirty days of the final public notice. All written comments ~~will~~must be considered by the department in the formulation of its final determinations.

   b. The department may hold a hearing if it determines there is significant public interest in holding such a hearing. Public notice for a hearing will be made in the same manner as for a draft permit. The hearing ~~will~~must be before the department and ~~will~~must be held at least fifteen days after the public notice has been published.

4. If, after review of all information received, the department approves the permit application, the department shall:

   a. Issue a permit if it is for the renewal of an existing solid waste management facility or a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation; or

   b. Notify the board of county commissioners in which a new solid waste management facility will be located of the intent to issue a permit, and the county's opportunity to call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county. If the voters approve the facility or if a special election is not called, the department shall issue the permit.

5. If, after review of all information received, the department makes the determination to deny the permit, the applicant ~~will~~shall be notified, in writing, of the denial. The department shall set forth in any notice of denial the reasons for denial. If the application is denied, the applicant may submit a new application, which will require a new public notice. A denial must be without prejudice to the applicant's right to a hearing before the department pursuant to North Dakota Century Code chapter 28-32.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-03.1-04. Permit application review timeline.

Upon receipt of a complete permit application in accordance with section 33.1-20-03.1-02, the department has one hundred twenty days to review and approve or disapprove the application and notify the applicant of the decision. The department may extend the period an additional one hundred twenty days if the applicant submits a significant change that in the department's judgment requires additional time to review.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-04.1

33.1-20-04.1-01. General location standards.

1. ~~No~~A solid waste management facility may not be located in areas ~~which~~that result in impacts to human health or environmental resources or in an area ~~which~~that is unsuitable because of reasons of topography, geology, hydrology, or soils.

2. Sites for new, or for lateral expansions of, land treatment units, surface impoundments closed with solid waste in place, municipal waste landfills, industrial waste landfills, and special waste landfills must minimize, control, or prevent the movement of waste or waste constituents with geologic conditions and engineered improvements. Sites ~~should~~must be underlain by materials with low permeability to provide a barrier to contaminant migration. Sites for CCR units subject to chapter 33.1-20-08 must also comply with the location standards of section 33.1-20-08-03.

   a. The following geographic areas or conditions must be excluded in the consideration of a site:

      (1) Where the waste is disposed within an aquifer;

      (2) Within a public water supply designated wellhead protection area;

      (3) Within a one hundred-year floodplain;

      (4) Where geologic or manmade features, including underground mines, may result in differential settlement and failure of a structure or other improvement on the facility;

      (5) On the edge of or within:

         (a) Channels;

         (b) Ravines; or

         (c) Areas of steep topography whose slope is unstable due to erosion or mass movement;

      (6) Within woody draws; or

      (7) In areas designated as critical habitats for endangered or threatened species of plant, fish, or wildlife.

   b. The following geographic areas or conditions may not be approved by the department as a site unless the applicant demonstrates there are no reasonable alternatives:

      (1) Over or immediately adjacent to principal glacial drift aquifers identified by the ~~state engineer~~department of water resources;

      (2) Closer than one thousand feet [304.8 meters] to a down gradient drinking water supply well;

      (3) Closer than two hundred feet [60.96 meters] horizontally from the ordinary high water elevation of any surface water or wetland;

      (4) Within final cuts of surface mines; or

      (5) Closer than one thousand feet [304.8 meters] to any state or national park.

   c. The department may establish alternative criteria based on specific site conditions.

3. No municipal waste landfill or lateral expansion may be located within ten thousand feet [3,048 meters] of any airport runway currently used by turbojet aircraft or five thousand feet [1,524 meters] of any runway currently used by only piston-type aircraft. Owner or operators proposing a new site or lateral expansions for a municipal waste landfill within a five-mile [8.05-kilometer] radius of an airport must notify the affected airport and the federal aviation administration.

4. A minimum horizontal separation of twenty-five feet [7.62 meters] must be maintained between new or lateral expansions of solid waste management units and any aboveground or underground pipeline or transmission line. The owner shall designate the location of all such lines and easements.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-04.1-03. Plan of operation.

All solid waste management facilities, except those permitted by rule in accordance with section 33.1-20-02.1-02, shall meet the requirements of this section.

1. The owner or operator of a solid waste management unit or facility shall prepare and implement a plan of operation approved by the department as part of the permit. The plan must describe the facility's operation to operating personnel and the facility must be operated in accordance with the plan. The plan of operation must be available for inspection at the request of the department. Each plan of operation must include, ~~where~~if applicable:

   a. A description of waste acceptance procedures, including categories of solid waste to be accepted and waste rejection procedures as required by subsection 2 of section 33.1-20-05.1-02 or subsection 8 of section 33.1-20-06.1-02 or subsection 2 of section 33.1-20-07.1-01 or subsection 4 of section 33.1-20-10-03;

   b. A description of waste handling procedures;

   c. A description of facility inspection activities required by subsection 2, including frequency;

   d. A description of contingency actions for the following:

      (1) Fire or explosion;

      (2) Leaks;

      (3) Ground water contamination;

      (4) Other releases (for example, dust, debris, leachate, failure of run-on diversion or runoff containment systems); and

      (5) Any other issues pertinent to the facility.

   e. Leachate removal system operation and maintenance procedures;

   f. Safety procedures;

   g. For landfills, implementation of sequential partial closure;

   h. A description of industrial waste or special waste management procedures, which include:

(1) A procedure for notifying solid waste generators and haulers of the facility operating requirements and restrictions;

(2) A procedure for evaluating waste characteristics, liquid content, the specific analyses that may be required for specific wastes, and the criteria used to determine when analyses are necessary, the frequency of testing, and the analytical methods to be used;

(3) A procedure for inspecting and for identifying any special management requirements, and the rationale for accepting or rejecting a waste based on its volume and characteristics;

(4) Procedures for managing the following solid waste, as appropriate:

(a) Bulk chemical containers which contain free product or residue;

(b) Asbestos;

(c) Waste containing polychlorinated biphenyls at a concentration less than fifty parts per million;

(d) Radioactive waste;

(e) Rendering and slaughterhouse waste;

(f) Wastes that could spontaneously combust or that could ignite other waste because of high temperatures;

(g) Foundry waste;

(h) Ash from incinerators, resource recovery facilities, and power plants;

(i) Paint residues, paint filters, and paint dust;

(j) Sludges, including ink sludges, lime sludge, wood sludge, and paper sludge;

(k) Fiberglass, urethane, polyurethane, and epoxy resin waste;

(l) Spent activated carbon filters;

(m) Oil and gas exploration and production waste;

(n) Wastes containing free liquids;

(o) Contaminated soil waste from cleanup of spilled products or wastes; and

(p) Any other solid waste that the owner or operator plans to handle.

(5) ~~The owner or operator must describe~~A description of any solid waste that will not be accepted at the facility; and

i. The owner or operator ~~must~~shall amend the plan whenever operating procedures, contingency actions, waste management procedures, or wastes have changed. The owner or operator shall submit the amended plan to the department for approval or disapproval.

2. The owner or operator shall inspect the facility to ensure compliance with this article, a permit, and approved plans. The owner or operator shall keep an inspection log including information

such as the date of inspection, the name of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action taken.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-04.1-04. Recordkeeping and reporting.

The owner or operator of a solid waste management facility, except those permitted by rule in accordance with section 33.1-20-02.1-02, shall comply with these recordkeeping and reporting requirements:

1. A solid waste management facility may not accept solid waste until the department has received and approved a report which includes narrative, drawings, and test results to certify that the facility has been constructed in accordance with the approved plans and specifications and as required by the permit.

2. An owner or operator shall keep an operating record consisting of a copy of each application, plan, report, notice, drawing, inspection log, test result or other document required by this article, including those enumerated in the subdivisions of this subsection, or a permit. The operating record must include any deviations from this article, the permit, and facility plans where department approval is required. The owner or operator shall provide a copy of any document in the operating record upon receiving a request from the department. The operating record must be kept at the facility, or at a location near the facility within North Dakota and approved by the department.

   a. The permit preapplication, section 33.1-20-03.1-01.

   b. The permit application, section 33.1-20-03.1-02.

   c. An amended permit application, section 33.1-20-03.1-03.

   d. The site characterization, section 33.1-20-13-01.

   e. Any site demonstrations, section 33.1-20-04.1-01.

   f. Documentation of training, section 33.1-20-04.1-02.

   g. The plan of operation, section 33.1-20-04.1-03.

   h. Facility inspection logs, section 33.1-20-04.1-03.

   i. Records of notice, section 33.1-20-02.1-05.

   j. As-built drawings and certifications, ~~sections 33.1-20-04.1-04~~subsection 1 and section 33.1-20-04.1-05.

   k. The ground water monitoring plan, all monitoring data, and statistical interpretations, section 33.1-20-13-02.

   l. Records of the weight or volume of waste, section 33.1-20-04.1-09.

   m. The closure plan, sections 33.1-20-04.1-05 and 33.1-20-14-02.

   n. The postclosure plan, sections 33.1-20-04.1-09 and 33.1-20-14-02.

   o. The financial assurance instruments for closure and postclosure, chapter 33.1-20-14.

p. Records of gas monitoring and remediation, section 33.1-20-06.1-02.

q. The annual report, ~~section 33.1-20-04.1-04~~subsection 3.

r. Notices of intent to close and completion of postclosure, sections 33.1-20-04.1-05 and 33.1-20-04.1-09 respectively.

s. The permit and any modifications, sections 33.1-20-02.1-04 and 33.1-20-02.1-07.

3. An owner or operator shall prepare and submit a searchable electronic copy of an annual report to the department by March first of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

a. Name and address of the facility;

b. Calendar period covered by the report;

c. Annual quantity for each category of solid waste in tons or volume;

d. Identification of occurrences and conditions that prevented compliance with the permit and this article; and

e. Other items identified in the facility plans and permit.

4. An owner or operator required to monitor ground water pursuant to chapter 33.1-20-13 shall prepare and submit a ground water annual report to the department by April first of each year. The ground water annual report must cover ground water analysis for the facility during the previous calendar year and must include the following information:

a. Name and address of the facility;

b. Calendar period covered by the report;

c. A map, aerial image, or diagram showing the solid waste unit and all background (or upgradient) and downgradient monitoring wells and the well identification numbers for the wells that are part of the ground water monitoring program for the solid waste unit;

d. Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

e. All monitoring data obtained and a summary including the number of ground water samples that were collected for analysis for each background (or upgradient) and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

f. Statistical interpretations;

g. A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituents detected at a statistically significant increase over background levels);

h. Identification of occurrences and conditions that prevented compliance with the permit or this article; and

i. Other items identified in the facility plans and permit.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-04.1-05. General closure standards.

The requirements of this section apply to all solid waste management facilities, unless otherwise specified.

1. Each owner or operator shall close their facility in a manner that ~~achieves the following~~:

   a. Minimizes the need for further maintenance; and

   b. Controls, minimizes, or eliminates any escape of solid waste constituents, leachate, fugitive emissions, contaminated runoff, or waste decomposition products.

2. Sequential partial closure must be implemented to minimize the working face of a landfill.

3. Closure must be implemented within thirty days after receipt of the final volume of waste and must be completed within one hundred eighty days following the beginning of closure activities, unless otherwise specified and approved under subsection 5. Prior to beginning closure, the owner or operator ~~must~~shall notify the department in writing of the intent to close.

4. The owner or operator of a landfill for which closure is completed in part or whole shall enter into the operating record and submit to the department:

   a. As-built drawings showing the topography, pertinent design features, extent of waste, and other appropriate information; and

   b. Certification by the owner or operator and a qualified professional engineer that closure has been completed in accordance with the approved closure plan and this article. Closure of a publicly owned inert landfill that receives, on average, less than forty tons [36.3 metric tons] per day does not require certification by a qualified professional engineer unless the total cost of closure is greater than two hundred thousand dollars.

5. Each owner or operator shall prepare and implement a written closure plan approved by the department as part of the permitting process. The closure plan must:

   a. Estimate the largest area ever requiring final cover at any time during the active life of the site;

   b. Estimate the maximum inventory of solid waste onsite over the active life of the facility;

   c. For landfills, describe the final cover and the methods to install the cover;

   d. Project time intervals at which sequential partial closure or closure is to be implemented;

   e. Describe the resources and equipment necessary for closure; and

   f. Identify closure costs estimates and provide financial assurance mechanisms as required by chapter 33.1-20-14.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

33.1-20-04.1-07. Piles used for storage and treatment - Standards.

This section is applicable to solid waste stored or treated in piles, composting, sludge piles, scrap tire piles, garbage which is in place for more than three days, putrescible waste, other than garbage,

which is in place for more than three weeks, and other solid waste ~~not intended for recycling~~ which is in place for more than ~~three months~~one month.

1. Vector control measures must be instituted when necessary to prevent the transmission of disease and otherwise prevent and reduce hazards created by rats, snakes, insects, birds, cats, dogs, skunks, and other animals or vermin.

2. An owner and operator of a waste pile, except composting of grass and leaves, shall:

   a. Comply with the general facility standards of section 33.1-20-04.1-02; and

   b. Maintain the site including the removal of all solid waste, as necessary, and at closure to a permitted facility, or otherwise manage the waste that is in keeping with the purpose of this article.

3. Requirements for waste piles likely to produce a leachate are:

   a. Waste piles must be underlain by concrete, asphalt, clay, or an artificial liner. The liner must be of sufficient thickness and strength to withstand stresses imposed by waste handling equipment and the pile;

   b. Runoff and run-on control systems must be designed, installed, and maintained to handle a twenty-five-year, twenty-four-hour storm event;

   c. Based on site and waste characteristics and the proposed operation, the department may require that waste piles have the following:

      (1) A ground water monitoring system that complies with chapter 33.1-20-13;

      (2) A leachate collection and treatment system; and

      (3) Financial assurance; and

   d. The department may require that the entire base or liner be inspected for wear and integrity and repaired or replaced by removing storage waste or otherwise providing inspection access to the base or liner.

4. An owner or operator of a tire pile shall:

   a. Control access to the tire pile by fencing;

   b. Limit piles of scrap tires to a maximum basal area of ten thousand square feet [929 square meters] in size, which, along with the fire lane, must be underlain by concrete, asphalt, clay overlain with gravel, or other appropriate material of sufficient thickness, strength, and low permeability to withstand stresses imposed by waste handling equipment, fire control equipment, and to minimize liquid infiltration in case of a fire;

   c. Limit the height of the tire pile to twenty feet [6.1 meters];

   d. Provide for a fifty-foot [15.24-meter] fire lane around the tire pile;

   e. Provide site access by fire control equipment;

   f. Provide run-on and runoff control systems adequate to control surface water from a twenty-five-year, twenty-four-hour precipitation event; and

   g. Provide financial assurance adequate to remove stockpiled waste and to remediate environmental contingencies.

5. An owner or operator of a composting facility for grass and leaves shall:

   a. Direct surface water or storm water from composting and waste storage areas;

   b. Control surface water drainage to prevent leachate runoff;

   c. Store solid waste separated from compostable material in a manner that controls vectors and aesthetic degradation, and remove this solid waste from the site to an appropriate facility at least weekly;

   d. Turn the yard waste periodically to aerate the waste, maintain temperatures, and control odors; and

   e. Prevent the occurrence of sharp objects greater than one inch [2.54 centimeters] in size in finished compost offered for use.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-04.1-09. General disposal standards.

1. In addition to sections 33.1-20-04.1-02, 33.1-20-04.1-03, 33.1-20-04.1-04, and 33.1-20-04.1-05, the standards of this section apply to all landfills, surface impoundments closed with solid waste in place, and land treatment units, unless otherwise indicated.

2. Construction and operation standards for solid waste management facilities regulated by this section:

   a. Every solid waste landfill or facility ~~shall~~must have and maintain, or have access to, equipment adequate for the excavation, compaction, covering, surface water management, and monitoring procedures required by approval plans and this article.

   b. Roads must be constructed and maintained to provide access to the facility. Access roads must be cleaned and decontaminated as necessary.

   c. There must be available an adequate supply of suitable cover material, which, if necessary, must be stockpiled and protected for winter operation.

   d. The final cover of all disposal facilities must be designed and constructed in a manner that ensures the quality and integrity of the hydraulic barrier and the protective vegetative cover.

   e. The working face or open area of a landfill must be limited in size to as small an area as practicable. Sequential partial closure must be implemented as necessary to keep the disposal area as small as practicable and to close filled areas in a timely manner.

   f. All disposal facilities ~~shall~~must identify, quantify, remove, stockpile, and maintain suitable plant growth material for later use in closure.

   g. Any recycling or salvage activity must be authorized by the owner or operator and must be in a separate area in a manner to avoid injury and interference with the landfill operation.

   h. Vehicles, farm machinery, metal appliances, mobile homes, trailers, or other similar items brought to the facility for recycling may be stored temporarily in a separate area.

i. Vector control measures, in addition to the application of cover material, must be instituted whenever necessary to prevent the transmission of disease, prevent bird hazards to aircraft, and otherwise prevent and reduce hazards created by rats, flies, snakes, insects, birds, cats, dogs, and skunks.

j. All domestic animals must be excluded from the facility. Feeding of garbage to animals is prohibited.

k. All earthen material must be maintained onsite unless removal from the site is authorized by the department.

3. Construction and operation standards, excluding inert waste landfills.

a. The landfill must be designed and operated to prevent the run-on and runoff of surface waters resulting from a maximum flow of a twenty-five-year, twenty-four-hour storm.

b. Facilities receiving on average over twenty tons [18.2 metric tons] per day of solid waste shall make provisions for measuring all waste delivered to and disposed in the facility. Weight measurements are preferable; volume measurements (cubic yards) are acceptable.

c. Active areas of the landfill must be surveyed periodically to ensure that filling is proceeding in a manner consistent with the landfill design and that closure grades are not exceeded.

d. All run-on or runoff must be properly controlled to avoid its concentration on or in solid waste and to minimize infiltration into the waste material. Disposal ~~shall~~must avoid any areas within the facility where run-on or runoff accumulates.

e. Leachate removal systems must be operated and maintained to assure continued function according to the design efficiency. This ~~shall~~must include, where applicable:

(1) Flushing, inspection and, if necessary, repair of collection lines after placement of the first layer of waste in a landfill cell;

(2) Annual sampling and analysis of leachate for the parameters required under the ground water quality monitoring required under section 33.1-20-13-02;

(3) At minimum, semiannual monitoring of leachate head or elevations above the liner;

(4) Annual flushing of leachate collection lines to remove dirt and scale; and

(5) Inclusion of leachate removal system operation, inspection, and maintenance procedures in the operating record.

f. No composite liner may be exposed to freezing more than one winter season, excluding composite liners in surface impoundments. At least three feet [0.91 meters] of solid waste or other material approved by the department must be placed above the upper drainage layer on all lined areas by December first. No disposal may take place after December first in areas that have not met this requirement without first testing the composite liner's integrity and receiving approval from the department.

4. Closure standards, excluding land treatment units.

a. Closed solid waste management units may not be used for cultivated crops, heavy grazing, buildings, or any other use which might disturb the protective vegetative and soil cover.

b. All solid waste management units must be closed with a final cover designed to:

(1) Limit the amount of percolation that may enter the waste to meet the efficiency requirements for that type of solid waste management unit;

(2) Minimize precipitation run-on from adjacent areas;

(3) Minimize erosion and optimize drainage of precipitation falling on the landfill. The grade of slopes may not be less than three percent, nor more than fifteen percent, unless the applicant or permittee provides justification to show steeper slopes are stable and will not result in long-term surface soil loss in excess of two tons [1.82 metric tons] per acre per year. In no instance may slopes exceed twenty-five percent, including exterior slope of any swales or drainage structures; and

(4) Provide a surface drainage system which does not adversely affect drainage from adjacent lands.

c. The final cover must include six inches [15.2 centimeters] or more of suitable plant growth material which must be seeded with shallow rooted grass or native vegetation.

d. The department may allow, on a case-by-case basis, the use of closed inert waste landfill sites for certain beneficial uses that would not pose a threat to human health or the environment.

5. Postclosure standards for solid waste management facilities regulated by this section.

a. ~~The~~During the postclosure period, the owner or operator of a landfill or a surface impoundment closed with solid waste in place shall~~ meet the following during the postclosure period~~:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover to correct effects of settlement, subsidence, and other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

(2) Maintain and operate the leachate collection system, if applicable;

(3) Monitor the ground water and maintain the ground water monitoring system, if applicable; and

(4) Operate and maintain the gas control system, if applicable.

b. The owner or operator of a municipal waste landfill, an industrial waste landfill, a special waste landfill, a surface impoundment closed with solid waste remaining in place, or a land treatment facility shall prepare and implement a written postclosure plan approved by the department as a part of the permitting process. The postclosure plan must address facility maintenance and monitoring activities for a postclosure period of thirty years.

(1) Postclosure includes appropriate ground water monitoring; surface water monitoring; gas monitoring; and maintenance of the facility, facility structures, and ground water monitoring systems.

(2) The postclosure plan must provide the name, address, and telephone number of the person or office to contact during the postclosure period; and project time intervals at which postclosure activities are to be implemented, identify postclosure cost estimates, and provide financial assurance mechanisms as required by chapter 33.1-20-14.

(3) The department may require an owner or operator to amend the postclosure plan, including an extension of the postclosure period, and implement the changes. If the permittee demonstrates that the facility is stabilized, the department may authorize the owner or operator to discontinue postclosure activities.

c. Following completion of the postclosure period, the owner or operator shall notify the department verifying that postclosure management has been completed in accordance with the postclosure plan.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-08

33.1-20-08-01. Definitions.

The terms used in this chapter have the same meaning as in North Dakota Century Code section 23.1-08-02 and section 33.1-20-01.1-03, except:

1. "Active facility or active electric utilities or independent power producers" means any facility subject to the requirements of this article that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An offsite disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.

2. "Active life or in operation" means the period of operation beginning with the initial placement of solid waste in the solid waste management unit and ending at completion of closure activities in accordance with section 33.1-20-08-07.

3. "Active portion" means that part of the solid waste management unit that has received or is receiving solid waste and that has not completed closure in accordance with section 33.1-20-08-07.

4. "CCR landfill" means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this article, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

5. "CCR pile" means any noncontainerized accumulation of solid, nonflowing CCR that is placed on the land. Coal combustion residuals that is beneficially used offsite is not a CCR pile.

6. "CCR surface impoundment" means a natural topographic depression, manmade excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

7. "CCR surface impoundment height" means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

8. "CCR unit" means a CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraphs in which it is used. This term includes both new and existing units, unless otherwise specified.

9. "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

10. "Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

11. "Grading" means the placement of CCR only to the extent necessary to create sufficient differences in elevation to support stormwater drainage.

12. "Ground water" means water below the land surface in a zone of saturation as defined in North Dakota Century Code section 23.1-08-04.

13. "Hazard potential classification" means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or misoperation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high-hazard potential CCR surface impoundment, low-hazard potential CCR surface impoundment, and significant-hazard potential CCR surface impoundment, which terms mean:

    a. "High-hazard potential CCR surface impoundment" means a diked surface impoundment where failure or misoperation will probably cause loss of human life.

    b. "Low-hazard potential CCR surface impoundment" means a diked surface impoundment where failure or misoperation results in no probable loss of human life and low economic or environmental losses, or both. Losses are principally limited to the surface impoundment owner's property.

    c. "Significant-hazard potential CCR surface impoundment" means a diked surface impoundment where failure or ~~mis-operation~~misoperation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

~~13.~~14. "Height" means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

~~14.~~15. "Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015.

~~15.~~16. "In operation" means the same as "active life".

~~16.~~17. "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a ninety-eight percent or greater probability that the acceleration will not be exceeded in fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

~~17.~~18. "New CCR landfill" means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015. Overfills also are considered new CCR landfills.

~~18.~~19. "New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015.

~~19. "Nonground water releases" means releases from the CCR unit other than the releases directly to the ground water that are detected through the unit's ground water monitoring system. Examples of nonground water releases include seepage through the embankment, minor ponding of seepage at the toe of the embankment of the CCR unit, seepage at the abutments of the CCR unit, seepage from slopes, ponding at the toe of the unit, a release of fugitive dust and releases of a "catastrophic" nature such as the breaching of an impoundment.~~

20. "Overfill" means a new CCR landfill constructed over a closed CCR surface impoundment.

21. "Pertinent surrounding areas" means all areas of the CCR surface impoundment or immediately surrounding the CCR surface impoundment that have the potential to affect the structural stability and condition of the CCR surface impoundment, including the toe of the downstream slope, the crest of the embankment, abutments, and unlined spillways.

22. "Poor foundation conditions" ~~mean~~means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in subsection 3 of section 33.1-20-08-04 would cause a poor foundation condition.

23. "Qualified person" means a person or persons trained to recognize specific appearances of structural weakness and other conditions that are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

24. "Retrofit" means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in subsection 2 of section 33.1-20-08-04.

25. "Seismic factor of safety" means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a two percent probability of exceedance in fifty years, equivalent to a return period of approximately two thousand five hundred years, based on the United States geological survey seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

26. "Seismic impact zone" means an area having a two percent or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in fifty years.

27. "Slope protection" means measures installed on the slopes or pertinent surrounding areas of the CCR unit that protect the slope against wave action, erosion, or adverse effects of rapid drawdown. Slope protection includes grassy vegetation and engineered slope protection measures.

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-04

33.1-20-08-02. Applicability.

1. The requirements of this chapter apply to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. Unless otherwise provided in this chapter, these requirements also apply to disposal units located offsite of the electric utilities

and independent power producers. This chapter also applies to any practice that does not meet the definition of a beneficial use of CCR.

2. The requirements of this chapter apply to inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.

3. This chapter does not apply to CCR landfills that have ceased receiving CCR prior to October 19, 2015.

~~3. This chapter does not apply to electric utilities and independent power producers that have ceased operating prior to October 19, 2015.~~

4. This chapter does not apply to wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals. This chapter also does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels, including other fossil fuels, other than coal, for the purpose of generating electricity unless the fuel burned consists of more than fifty percent coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal.

5. This chapter does not apply to practices that meet the definition of a beneficial use of CCR.

6. This chapter does not apply to CCR placement at active or abandoned underground or surface coal mines.

7. This chapter does not apply to municipal solid waste landfills that receive CCR.

8. Owners and operators of CCR units that are subject to this chapter are subject to the solid waste management requirements of this article, unless specifically excluded in other chapters.

9. ~~The owner or operator of an existing CCR unit subject to this chapter, which has a permit that is in effect prior to July 1, 2020, shall apply to the department for a modified permit which meets the requirements of this chapter within twenty-four months of July 1, 2020.~~The following are applicable to all CCR units:

a. Floodplains.

(1) Facilities or practices in floodplains must not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(2) As used in this section:

(a) "Based flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in one hundred years on the average over a significantly long period.

(b) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.

(c) "Washout" means the carrying away of solid waste by waters of the base flood.

b. Endangered species.

(1) Facilities or practices must not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife.

(2) The facility or practice must not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in title 50, Code of Federal Regulations, part 17.

(3) As used in this section:

(a) "Endangered or threatened species" means any species listed as such pursuant to section 4 of the Endangered Species Act.

(b) "Destruction" or "adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(c) "Taking" means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing, or collecting or attempting to engage in such conduct.

c. Surface water.

(1) For purposes of section 4004(a) of the Resource Conservation and Recovery Act, a facility must not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the national pollutant discharge elimination system under section 402 of the Clean Water Act, as amended.

(2) For purposes of section 4004(a) of the Resource Conservation and Recovery Act, a facility must not cause a discharge of dredged material or fill material to waters of the United States that is in violation of the requirements under section 404 of the Clean Water Act, as amended.

(3) A facility or practice must not cause nonpoint source pollution of waters of the United States that violates applicable legal requirements implementing an areawide or statewide water quality management plan that has been approved by the administrator under section 208 of the Clean Water Act, as amended.

(4) Definitions of the terms discharge of dredged material, point source, pollutant, waters of the United States, and wetlands can be found in the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and implementing regulations, specifically title 33, Code of Federal Regulations, part 323 (42 FR 37122, July 19, 1977).

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-03. Location standards.

In addition to the general location standards in section 33.1-20-04.1-01, the CCR unit must meet the following ~~must be met~~if applicable:

1. Placement above the uppermost aquifer. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must be constructed with a base that is a minimum of five feet [1.52 meters] above the upper limit of the uppermost aquifer or demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the landfill and the uppermost aquifer due to normal fluctuations in ground water elevations, including the seasonal high water table.

a. For a new CCR landfill or surface impoundment or any lateral expansion of a CCR unit, the demonstration that the unit meets the minimum requirements for placement above the uppermost aquifer must be included with the application for a new permit or permit modification. ~~For an existing CCR surface impoundment, the demonstration must be included with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.~~

b. The demonstration is considered complete ~~when~~if the demonstration is approved by the department and placed in the facility's operating record.

c. An owner or operator of an existing CCR surface impoundment who fails to make the demonstration shall begin closure as required by subparagraph a of paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07.

d. An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration is prohibited from placing CCR in the CCR unit.

2. Wetlands.

a. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in wetlands unless the owner or operator demonstrates no later than the date specified in subdivision b that the CCR unit meets the following requirements:

(1) Where applicable under section 404 of the Clean Water Act or applicable state wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR unit is reasonably available that does not involve wetlands.

(2) The construction and operation of the CCR unit ~~will~~must not cause or contribute to any of the following:

(a) A violation of any applicable state or federal water quality standard;

(b) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act; or

(c) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973.

(3) The CCR unit ~~will~~must not cause or contribute to a significant degradation of wetlands by addressing all of the following factors:

(a) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the CCR unit;

(b) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR unit;

(c) The volume and chemical nature of the CCR;

(d) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;

(e) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and

(f) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent reasonable as required by paragraphs 1 through 3 of subdivision a of subsection 2 of section ~~33.1-20-08-08~~33.1-20-08-03, then minimizing unavoidable impacts to the maximum extent reasonable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasoned determination with respect to the demonstrations listed in paragraphs 1 through 4.

b. The owner or operator of the CCR unit shall complete the demonstrations required by subdivision a by the date specified in ~~either~~ paragraph 1 ~~or 2~~.

(1) ~~For an existing CCR surface impoundment, the owner or operator shall include the demonstration with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.~~

~~(2)~~ For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall include the demonstration with the application for a new permit or permit modification.

~~(3)~~(2) The demonstration is considered complete ~~when~~if the demonstration is approved by the department and placed in the facility's operating record.

~~(4)~~(3) An owner or operator of an existing CCR surface impoundment who fails to make the demonstration showing compliance with the requirements of subdivision a ~~by the date specified in paragraph 1~~ is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2 of section 33.1- 20-08-07.

~~(5)~~(4) For owners or operators of new and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR unit.

3. Fault areas.

a. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located within two hundred feet [60 meters] of the outermost damage zone of a fault that has had displacement in Holocene time unless the owner or operator demonstrates by the dates specified in subdivision c that an alternative setback distance of less than two hundred feet [60 meters] will prevent damage to the structural integrity of the CCR unit.

b. The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or a qualified environmental professional stating that the demonstration meets the requirements of subdivision a.

c. The owner or operator of the CCR unit shall complete the demonstration required by subdivision a by the date specified in ~~either~~ paragraph 1 ~~or 2~~.

(1) ~~For an existing CCR surface impoundment, the owner or operator shall include the demonstration with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.~~

~~(2)~~ For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall include the demonstration with the application for a new permit or permit modification.

~~(3)~~(2) The demonstration is considered complete ~~when~~if the demonstration is approved by the department and placed in the facility's operating record.

~~(4)~~(3) An owner or operator of an existing surface impoundment who fails to make the demonstration showing compliance with the requirements of subdivision a ~~by the date specified in paragraph 1~~ is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07.

~~(5)~~(4) For owners or operators of new and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR unit.

4. Seismic impact zones.

a. New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in seismic impact zones unless the owner or operator demonstrates by the dates specified in subdivision c that all structural components, including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

b. The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer or a qualified environmental professional stating that the demonstration meets the requirements of subdivision a.

c. The owner or operator of the CCR unit shall complete the demonstration required by subdivision a by the date specified in ~~either~~ paragraph 1 ~~or 2~~.

(1) ~~For an existing CCR surface impoundment, the owner or operator shall include the demonstration with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.~~

~~(2)~~ For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall include the demonstration with the application for a new permit or permit modification.

~~(3)~~(2) The demonstration is considered complete ~~when~~if the demonstration is approved by the department and placed in the facility's operating record.

~~(4)~~(3) An owner or operator of an existing surface impoundment who fails to make the demonstration showing compliance with the requirements of subdivision a of this subsection ~~by the date specified in paragraph 1~~ is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07.

~~(5)~~(4) For owners or operators of new and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR unit.

5. Unstable areas.

   a. An existing or new CCR landfill, existing or new CCR surface impoundment, or any lateral expansions of an existing CCR unit must not be located in an unstable area unless the owner or operator demonstrates that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted.

   b. The owner or operator shall consider all of the following factors, at a minimum, when determining whether an area is unstable:

      (1) Onsite or local soil conditions that may result in significant differential settling;

      (2) Onsite or local geologic or geomorphologic features; and

      (3) Onsite or local human-made features or events (both surface and subsurface)

   c. The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer or a qualified environmental professional stating that the demonstration meets the requirements of subdivision a.

   d. The owner or operator of the CCR unit shall complete the demonstration required by subdivision a by the date specified in ~~either~~ paragraph 1 ~~or 2~~.

      (1) ~~For an existing CCR landfill or surface impoundment, the demonstration must be included with the application for a permit modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02.~~

      ~~(2)~~ For a new CCR landfill or surface impoundment or any lateral expansion of a CCR landfill or surface impoundment, the demonstration must be included with the application for a new permit or permit modification.

   ~~(3)~~(2) The demonstration is considered complete ~~when~~if the demonstration is approved by the department and placed in the facility's operating record.

   ~~(4)~~(3) For owners or operators of an existing CCR surface impoundment or CCR landfill that fails to demonstrate compliance ~~by the date required in paragraph 1~~, the CCR landfill is subject to the requirements in paragraph 1 of subdivision b of subsection 2 of section 33.1-20-08-07 or paragraph 1 of subdivision d of subsection 2 of section 33.1-20-08-07, respectively.

   ~~(5)~~(4) For owners or operators of new CCR units and lateral expansions of existing CCR units that fail to demonstrate compliance, waste is prohibited from being placed into the CCR landfill.

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-04. Design criteria.

1. New CCR landfills and any lateral expansion of a CCR landfill must be designed, constructed, operated, and maintained with the appropriate hydraulic barrier and leachate management

system capable of collecting and removing leachate and contaminated surface water within the disposal unit during the operating period and postclosure period.

a. Prior to construction of an overfill, the underlying CCR surface impoundment must meet the requirements of subdivision d of subsection 3 of section 33.1-20-08-07.

b. Prior to construction of the CCR landfill or any lateral expansion of the CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer and approval by the department that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system meets the requirements of this subsection.

c. Upon completion of construction of the CCR landfill or any lateral expansion of the CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer and approval by the department that the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system has been constructed in accordance with the requirements of this subsection.

d. A composite liner is required. The liner must consist of at least two feet [60.9 centimeters] of recompacted clay with a hydraulic conductivity not to exceed 1 x 10^{-7} centimeters per second overlain with at least a sixty mil flexible membrane liner. The composite liner must be:

   (1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the CCR or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

   (2) Constructed of materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;

   (3) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

   (4) Installed to cover all surrounding earth likely to be in contact with the CCR or leachate.

e. The department may consider an alternative composite liner if all of the requirements of this subdivision are met. A certification must be obtained from a qualified professional engineer stating that:

   (1) The alternative composite liner consists of two components; the upper component consisting of, at a minimum, a sixty-mil flexible membrane liner, and a lower component, that is not a flexible membrane liner. If the lower component of the alternative liner is compacted soil, the flexible membrane liner must be installed in direct and uniform contact with the compacted soil.

   (2) The ~~transmissivity~~liquid flow rate through the lower component of the alternative composite liner is no greater than the ~~transmissivity~~liquid flow rate through two feet [60.9 centimeters] of compacted soil with a hydraulic conductivity of 1 x 10^{-7} centimeters per second.

   (3) The hydraulic conductivity for the two feet [60.9 centimeters] of compacted soil used in the comparison shall be no greater than 1 x 10^{-7} centimeters per second.

(4) The hydraulic conductivity of any alternative to the two feet [60.9 centimeters] of compacted soil must be determined using recognized and generally accepted good engineering practices.

(5) The ~~transmissivity~~liquid flow rate comparison must be made using this equation, which is derived from Darcy's Law for gravity flow through porous media:

$$\frac{Q}{A} = q = k\left(\frac{h}{t} + 1\right)$$

Where:

Q = flow rate (cubic centimeters/second);
A = surface area of the liner (squared centimeters);
q = flow rate per unit area (cubic centimeters/second/squared centimeter);
k = hydraulic conductivity of the liner (centimeters/second);
h = hydraulic head above the liner (centimeters); and
t = thickness of the liner (centimeters).

(6) The alternative composite liner must meet the requirements specified in paragraphs 1 through 4 of subdivision d.

f. The drainage layer must be designed and operated to minimize clogging during the active life and post-closure care period and have a hydraulic conductivity of 1 x 10^{-3} centimeters per second or greater throughout. The drainage layer must have a sufficient thickness to provide a transmissivity of 3 x 10^{-2} centimeters squared per second or greater.

g. The liner and leachate removal system must be compatible with the waste and leachate.

h. The liner and leachate removal system must maintain its integrity during the operating period and through postclosure period.

i. The system must have a collection efficiency of ninety percent or better and must be capable of maintaining a hydraulic head of less than twelve inches [30.5 centimeters] above the liner.

j. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of at least ninety-eight and one-half percent or better for collection or rejection of the precipitation that falls on the site.

2. Liner design criteria for CCR surface impoundments.

a. For existing CCR surface impoundments:

(1) ~~No later than twenty-four months after July 1, 2020, the~~The owner or operator of an existing CCR surface impoundment shall include with the application for a permit ~~modification~~ that meets the requirements of this chapter, ~~as required by subsection 9 of section 33.1-20-08-02,~~ documentation that such CCR unit was constructed with ~~one of the following:~~

~~(a)~~ ~~A~~a composite liner that meets the requirements of subdivision d of subsection 1~~;~~

~~(b) An alternative composite liner that meets the requirements of subdivision e of subsection 1 or is demonstrated, using recognized and generally accepted good engineering practices, to have a total flux rate through the liner equal to or less than the flux rate through a liner that meets the requirements of subdivision d of subsection 1~~.

(2) The hydraulic conductivity of the compacted soil must be determined using recognized and generally accepted good engineering practices.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if ~~either~~:

(a) The owner or operator of the CCR unit determines that it is not constructed with a liner that meets the requirements of paragraph 1; or

(b) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraph 1.

(4) All existing unlined CCR surface impoundments are subject to the requirements of subdivision a of subsection 2 of section 33.1-20-08-07.

(5) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer and approval from the department that an existing CCR unit meets the requirements of this section.

b. New CCR surface impoundments and lateral expansions of existing and new CCR surface impoundments must be designed, constructed, operated, and maintained with a composite liner that meets the requirements of subdivision d of subsection 1. The department may consider an alternative liner that meets the requirements of subdivision e of subsection 1:

(1) Any liner specified in this section must be installed to cover all surrounding earth likely to be in contact with CCR. Dikes ~~shall~~must not be constructed on top of the composite liner.

(2) The owner or operator shall include certification from a qualified professional engineer that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of this section, with the application for a new permit or permit modification.

(3) Upon completion, the owner or operator shall obtain certification from a qualified professional engineer that the composite liner or if applicable, the alternative composite liner has been constructed in accordance with the requirements of this section.

3. Structural integrity criteria for existing CCR surface impoundments, new CCR surface impoundments, and lateral expansions of CCR surface impoundments.

a. The requirements of paragraph 1 in this subdivision apply to all CCR surface impoundments. The requirements in paragraphs 2 through 4 of this subdivision apply to all CCR surface impoundments, except for those CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified (e.g., a dike is constructed) such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of this section.

(1) The owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet [1.8 meters] high,

showing the permit number of the CCR unit, the name associated with the CCR unit, and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments:

(a) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the time frames specified in ~~paragraph~~subdivision f. The owner or operator shall document the hazard potential classification of each CCR unit as either a high-hazard potential CCR surface impoundment, a significant-hazard potential CCR surface impoundment, or a low-hazard potential CCR surface impoundment. The owner or operator also shall document the basis for each hazard potential classification.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the hazard potential classifications specified in this section were conducted in accordance with the requirements of this section.

(3) Emergency action plan (EAP):

(a) Development of the plan. No later than the time frames specified in ~~paragraph~~subdivision f, the owner or operator of a CCR unit determined to be either a high-hazard potential or significant-hazard potential CCR surface impoundment under periodic hazard potential classification assessments shall prepare and maintain a written EAP. The original EAP and any amendments to the EAP must be approved by the department and placed in the facility's operating record. At a minimum, the EAP must:

[1] Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

[2] Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

[3] Provide contact information of emergency responders;

[4] Include a map which delineates the downstream area that would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

[5] Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(b) Amendment of the plan:

[1] The owner or operator of a CCR unit that is required to have a written EAP may amend the written EAP at any time. The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

[2] The written EAP must be evaluated, at a minimum, every five years to ensure the required information is accurate. As necessary, the EAP must be updated and a revised EAP placed in the facility's operating record.

(c) Changes in hazard potential classification:

[1] If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high-hazard potential CCR surface impoundment or a significant-hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is placed in the facility's operating record.

[2] If the owner or operator of a CCR unit classified as a low-hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly reclassified as either a high-hazard potential CCR surface impoundment or a significant-hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare a written EAP for the CCR unit within six months of completing such periodic hazard potential assessment.

(d) The owner or operator of the CCR unit shall submit the written EAP, and any subsequent amendment of the EAP to the department for approval.

(e) Activation of the EAP. The EAP must be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The slopes and pertinent surrounding areas of the CCR unit must be designed, constructed, operated, and maintained with one of the forms of slope protection specified in subparagraph a that meets all of the performance standards of subparagraph b.

(a) Slope protection must consist of one of the following:

[1] A vegetative cover consisting of grassy vegetation;

[2] An engineered cover consisting of a single form or combination of forms of engineered slope protection measures; or

[3] A combination of vegetative cover and engineered cover.

(b) Any form of cover for slope protection must meet all of the following performance standards:

[1] The cover must be installed and maintained on the slopes and pertinent surrounding areas of the CCR unit;

[2] The cover must provide protection against surface erosion, wave action, and adverse effects of rapid drawdown;

[3] The cover must be maintained to allow for the observation of and access to the slopes and pertinent surrounding areas during routine and emergency events;

[4] Woody vegetation must be removed from the slopes or pertinent surrounding areas. Any removal of woody vegetation with a diameter greater than one-half inch [12.7 millimeters] must be directed by a person

familiar with the design and operation of the unit and in consideration of the complexities of removal of a tree or a shrubbery, who must ensure the removal does not create a risk of destabilizing the unit or otherwise adversely affect the stability and safety of the CCR unit or personnel undertaking the removal; and

[5] The vegetative height of grassy and woody vegetation must be maintained at a height that will not be detrimental to the native grass cover.

b. The requirements of subdivisions c through e apply to an owner or operator of a CCR surface impoundment that ~~either~~:

(1) Has a height of five feet [1.5 meters] or more and a storage volume of twenty acre-feet [24670 cubic meters] or more; or

(2) Has a height of twenty feet [6.1 meters] or more.

c. No later than in the time frames specified in ~~paragraph~~subdivision f for an existing impoundment, or included with the application for a permit for a new CCR unit or permit modification for lateral expansion of a CCR unit, the owner or operator of the CCR unit shall compile, to the extent feasible, the information specified below:

(1) The name and address of the owner or operator of the CCR unit, the name associated with the CCR unit, and the permit number.

(2) The location of the CCR unit identified on the most recent United States geological survey 7.5-minute or 15-minute topographic quadrangle map, or a topographic map of equivalent scale if a United States geological survey map is not available.

(3) A statement of the purpose for which the CCR unit is being used.

(4) The name and size in acres of the watershed within which the CCR unit is located.

(5) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(6) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(7) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or misoperation.

(8) A description of the type, purpose, and location of existing instrumentation.

(9) Area-capacity curves for the CCR unit.

(10) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(11) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(12) Any record or knowledge of structural instability of the CCR unit.

(13) Changes to the history of construction. If there is a significant change to any information required in this subdivision, the owner or operator of the CCR unit shall update the relevant information, notify the department, and place it in the facility's operating record.

d. Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment must, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(a) Stable foundations and abutments;

(b) Slope protection consistent with the requirements under paragraph 4 of subdivision a;

(c) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(d) Vegetated slopes of dikes and surrounding areas must be maintained at a height above the slope of the dike that will not be detrimental to the native grass cover, except for slopes which have an alternate form or forms of slope protection;

(e) A single spillway or a combination of spillways configured as stated below. The combined capacity of all spillways must be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified below.

[1] All spillways must be ~~either~~:

[a] Of nonerodible construction and designed to carry sustained flows; or

[b] Earth- or grass-lined and designed to carry short-term, infrequent flows at nonerosive velocities where sustained flows are not expected.

[2] The combined capacity of all spillways must adequately manage flow during and following the peak discharge from a:

[a] Probable maximum flood for a high-hazard potential CCR surface impoundment;

[b] One thousand-year flood for a significant-hazard potential CCR surface impoundment; or

[c] One hundred-year flood for a low-hazard potential CCR surface impoundment.

(f) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(g) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream, or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic structural stability assessment described in this subdivision must identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator of the CCR unit must remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of this section.

e. Periodic safety factor assessments.

(1) The owner or operator shall conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified below for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments must be supported by appropriate engineering calculations.

(a) The calculated static factor of safety under the long-term, maximum storage pool loading condition must equal or exceed 1.50.

(b) The calculated static factor of safety under the maximum surcharge pool loading condition must equal or exceed 1.40.

(c) The calculated seismic factor of safety must equal or exceed 1.00.

(d) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety must equal or exceed 1.20.

(e) For new CCR surface impoundments and lateral expansions of a CCR impoundment, the calculated static factor of safety under the end-of-construction loading condition must equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in this section meets the requirements of this section.

f. Time frames for periodic assessments.

(1) Initial assessment. Except as provided in this subdivision, the owner or operator of an existing CCR unit shall complete and include the initial assessments required by this section with the application for a permit ~~modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02~~, or for a new CCR unit or lateral expansion of a CCR unit, with the application for a new permit or permit modification. The owner or operator has completed an initial assessment when the assessment has been approved by the department and placed in the facility's operating record.

(2) The owner or operator of an existing CCR surface impoundment may elect to use a previously completed assessment to serve as the initial assessment required by this section, provided that the previously completed assessment:

(a) Was completed no earlier than April 17, 2013; and

(b) Meets the applicable requirements of this section.

(3) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct and complete the assessments required by this section every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment in lieu of the initial assessment, the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of this section, the owner or operator has completed an assessment ~~when~~if the relevant assessment has been approved by the department and placed in the facility's operating record.

(4) Failure to document minimum safety factors during the initial assessment for new CCR surface impoundments or lateral expansions of a CCR surface impoundment. Until an owner or operator of a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in paragraph 1 of subdivision e, the owner or operator is prohibited from placing CCR in such unit.

(5) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by this section is subject to the closure requirements of subdivision b of subsection 2 of section 33.1-20-08-07.

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-05. Operating criteria.

1. Air criteria.

a. The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall adopt measures that will effectively minimize CCR from becoming airborne at the facility, including CCR fugitive dust originating from CCR units, roads, and other CCR management and material handling activities.

b. ~~Coal combustion residuals~~The CCR fugitive dust control plan. The owner or operator of the CCR unit shall prepare and operate in accordance with a CCR fugitive dust control plan as specified in paragraphs 1 through 6. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act.

(1) The CCR fugitive dust control plan shall identify and describe the CCR fugitive dust control measures the owner or operator will use to minimize CCR from becoming airborne at the facility. The owner or operator shall select, and include in the CCR fugitive dust control plan, the CCR fugitive dust control measures that are most appropriate for site conditions, along with an explanation of how the measures selected are applicable and appropriate for site conditions. Examples of control measures that may be appropriate include: Locating CCR inside an enclosure or partial enclosure; operating a water spray or fogging system; reducing fall distances at material drop points; using wind barriers, compaction, or vegetative covers; establishing and enforcing reduced vehicle speed limits; paving and sweeping roads; covering trucks transporting CCR; reducing or halting operations during high wind events; or applying a daily cover.

(2) If the owner or operator operates a CCR landfill or any lateral expansion of a CCR landfill, the CCR fugitive dust control plan ~~shall~~must include procedures to emplace CCR as conditioned CCR. Conditioned CCR means wetting CCR with water to a moisture content that will prevent wind dispersal but will not result in free liquids. In lieu of water, CCR conditioning may be accomplished with an appropriate chemical dust suppression agent.

(3) The CCR fugitive dust control plan must include procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.

(4) The CCR fugitive dust control plan must include a description of the procedures the owner or operator will follow to periodically assess the effectiveness of the control plan.

(5) The owner or operator of an existing CCR unit shall include an initial CCR fugitive dust control plan for the facility with the application for a permit ~~modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02~~. For new CCR units or lateral expansions of CCR units, the fugitive dust control plan must be included with the application for a new permit or permit modification. The owner or operator has completed the initial CCR fugitive dust control plan ~~when~~if the plan has been approved by the department and placed in the facility's operating record.

(6) Amendment of the plan. The owner or operator of a CCR unit subject to the requirements of this section may amend the written CCR fugitive dust control plan at any time with approval by the department, provided the revised plan is placed in the facility's operating record. The owner or operator shall amend the written plan whenever there is a change in conditions that would substantially affect the written plan in effect, such as the construction and operation of a new CCR unit.

c. Annual CCR fugitive dust control report. The owner or operator of a CCR unit shall prepare an annual CCR fugitive dust control report that includes a description of the actions taken by the owner or operator to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The annual CCR fugitive dust control report ~~shall~~must be included with the facility's annual report required by subsection 4 of section 33.1-20-04.1-04. For purposes of this subdivision, the owner or

operator has completed the annual CCR fugitive dust control report ~~when~~if the annual report has been submitted to the department and placed in the facility's operating record.

2. Run-on and runoff controls for CCR landfills.

   a. The owner or operator of an existing or new CCR landfill or any lateral expansion of a CCR landfill shall design, construct, operate, and maintain:

      (1) A run-on control system to prevent flow onto the active portion of the CCR unit during the peak discharge from a twenty-four-hour, twenty-five-year storm; and

      (2) A run-off control system from the active portion of the CCR unit to collect and control at least the water volume resulting from a twenty-four-hour, twenty-five-year storm.

   b. Run-off from the active portion of the CCR unit must be handled in accordance with the surface water requirements in chapters 33.1-16-01 and 33.1-16-02.1.

   c. Run-on and run-off control system plan:

      (1) Content of the plan. The owner or operator shall prepare initial and periodic run-on and run-off control system plans for the CCR unit according to the time frames specified in this subsection. These plans must document how the run-on and run-off control systems have been designed and constructed to meet the applicable requirements of this subsection. Each plan must be supported by appropriate engineering calculations. The owner or operator has completed the initial run-on and run-off control system plan ~~when~~if the plan has been approved by the department and placed in the facility's operating record.

      (2) Amendment of the plan. The owner or operator may amend the written run-on and run-off control system plan at any time provided the revised plan is placed in the facility's operating record. The owner or operator shall amend the written run-on and run-off control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

      (3) Time frames for preparing the initial plan.

         (a) Existing CCR landfills. The owner or operator of the CCR unit shall include the initial run-on and run-off control system plan with the application for a permit ~~modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02~~.

         (b) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator shall include the initial run-on and run-off control system plan with the application for a new permit or permit modification.

      (4) Frequency for revising the plan. The owner or operator of the CCR unit shall prepare periodic run-on and run-off control system plans required by paragraph 1 every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first subsequent plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. The owner or operator has completed a periodic run-on and run-off control system plan when the plan has been approved by the department and placed in the facility's operating record.

3. Hydrologic and hydraulic capacity requirements for CCR surface impoundments.

a. The owner or operator of an existing or new CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall design, construct, operate, and maintain an inflow design flood control system as specified in paragraphs 1 and 2.

(1) The inflow design flood control system must adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in paragraph 3.

(2) The inflow design flood control system must adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in paragraph 3.

(3) The inflow design flood is:

(a) For a high-hazard potential CCR surface impoundment, as determined under subdivision a of subsection 3 of section 33.1-20-08-04, the probable maximum flood;

(b) For a significant-hazard potential CCR surface impoundment, as determined under subdivision a of subsection 3 of section 33.1-20-08- 04, the one thousand-year flood;

(c) For a low-hazard potential CCR surface impoundment, as determined under subdivision a of subsection 3 of section 33.1-20-08-04, the one hundred-year flood; or

(d) For an incised CCR surface impoundment, the twenty-five-year flood.

b. Discharge from the CCR unit must be handled in accordance with the surface water requirements under chapters 33.1-16-01 and 33.1-16-02.1.

c. Inflow design flood control system plan:

(1) Content of the plan. The owner or operator shall prepare initial and periodic inflow design flood control system plans for the CCR unit according to the time frames specified in this subdivision. These plans must document how the inflow design flood control system has been designed and constructed to meet the requirements of this section. Each plan must be supported by appropriate engineering calculations. The owner or operator of the CCR unit has completed the inflow design flood control system plan when the plan has been approved by the department and placed in the facility's operating record.

(2) Amendment of the plan. The owner or operator of the CCR unit may amend the written inflow design flood control system plan at any time provided the revised plan is approved by the department and placed in the facility's operating record. The owner or operator must amend the written inflow design flood control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Time frames for preparing the initial plan:

(a) Existing CCR surface impoundments. The owner or operator of the CCR unit shall include the initial inflow design flood control system plan with the application for a permit~~ modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02~~.

(b) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator ~~must~~shall include the initial inflow design flood control system plan with the application for a new permit or permit modification.

(4) Frequency for revising the plan. The owner or operator shall prepare periodic inflow design flood control system plans every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first periodic plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of this paragraph, the owner or operator has completed an inflow design flood control system plan ~~when~~if the plan has been approved by the department and placed in the facility's operating record.

4. Inspection requirements for CCR surface impoundments.

a. Inspections by a qualified person.

(1) All CCR surface impoundments and any lateral expansion of a CCR surface impoundment must be examined by a qualified person as follows:

(a) Inspect at least once each calendar week for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit;

(b) Inspect at least once each calendar week the discharge of all outlets of hydraulic structures which pass underneath the base of the surface impoundment or through the dike of the CCR unit for abnormal discoloration, flow, or discharge of debris or sediment; and

(c) Monitor at least once each calendar month all CCR unit instrumentation.

(d) The results of the inspection by a qualified person must be recorded in the facility's operating record.

(2) Time frames for inspections by a qualified person.

(a) Existing CCR surface impoundments. The owner or operator of the CCR unit shall initiate the inspections by a qualified person no later than one week after July 1, 2020, for weekly inspections and one month after July 1, 2020, for monthly inspections.

(b) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall initiate the inspections by a qualified person upon initial receipt of CCR by the CCR unit.

b. Annual inspections by a qualified professional engineer.

(1) If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under subdivision d subsection 3 of section 33.1- 20-08-04, the CCR unit must additionally be inspected on a periodic basis by a qualified professional engineer to ensure the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices. The inspection, at a minimum, must include:

(a) A review of available information regarding the status and condition of the CCR unit, including files available in the operating record (e.g., CCR unit design and construction information, previous periodic structural stability assessments, the results of inspections by a qualified person, and results of previous annual inspections);

(b) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit and appurtenant structures; and

(c) A visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit for structural integrity and continued safe and reliable operation.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses:

(a) Any changes in geometry of the impounding structure since the previous annual inspection;

(b) The location and type of existing instrumentation and the maximum recorded readings of each instrument since the previous annual inspection;

(c) The approximate minimum, maximum, and present depth and elevation of the impounded water and CCR since the previous annual inspection;

(d) The storage capacity of the impounding structure at the time of the inspection;

(e) The approximate volume of the impounded water and CCR at the time of the inspection;

(f) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit and appurtenant structures; and

(g) Any other changes which may have affected the stability or operation of the impounding structure since the previous annual inspection.

(3) Time frames for conducting the initial inspection.

(a) Existing CCR surface impoundments. The owner or operator of the CCR unit shall complete the initial inspection by a qualified professional engineer no later than one year after July 1, 2020.

(b) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall complete the initial annual inspection by a qualified professional engineer no later than fourteen months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections.

(a) Except as provided for in subparagraph b, the owner or operator of the CCR unit shall conduct the inspections required in this section on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating

record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this paragraph, the owner or operator has completed an inspection ~~when~~if the inspection report has been submitted to the department and placed in the facility's operating record.

(b) In any calendar year in which both the periodic inspection by a qualified professional engineer and the quinquennial (occurring every five years) structural stability assessment by a qualified professional engineer required by subdivision d of subsection 3 of section 33.1-20-08-04 are required to be completed, the annual inspection is not required, provided the structural stability assessment is completed during the calendar year. In the year following the quinquennial structural stability assessment, the deadline for completing the next annual inspection is one year from the date of completing the quinquennial structural stability assessment.

(5) If a deficiency or release is identified during an inspection, the owner or operator shall notify the department and remedy the deficiency or release in accordance with applicable requirements in subsections 6 through ~~9~~8 of section 33.1-20-08-06.

5. Inspection requirements for CCR landfills.

a. Inspections by a qualified person.

(1) All CCR landfills and any lateral expansion of a CCR landfill must be examined by a qualified person as follows:

(a) Inspect weekly for any appearances of actual or potential structural weakness and other conditions that are disrupting or have the potential to disrupt the operation or safety of the CCR unit; and

(b) The results of the inspection by a qualified person must be recorded in the facility's operating record.

(2) Time frames for inspections by a qualified person.

(a) Existing CCR landfills. The owner or operator of the CCR unit shall initiate the inspections by a qualified person no later than one week after July 1, 2020.

(b) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall initiate the inspections by a qualified person upon initial receipt of CCR by the CCR unit.

b. Annual inspections by a qualified professional engineer.

(1) Existing and new CCR landfills and any lateral expansion of a CCR landfill must be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices. The inspection must, at a minimum, include:

(a) A review of available information regarding the status and condition of the CCR unit, including files available in the operating record (e.g., the results of inspections by a qualified person, and results of previous annual inspections); and

(b) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(a) Any changes in geometry of the structure since the previous annual inspection;

(b) The approximate volume of CCR contained in the unit at the time of the inspection;

(c) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit; and

(d) Any other changes which may have affected the stability or operation of the CCR unit since the previous annual inspection.

(3) Time frames for conducting the initial inspection.

(a) Existing CCR landfills. The owner or operator of the CCR unit shall complete the initial inspection by a qualified professional engineer no later than one year after July 1, 2020.

(b) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall complete the initial annual inspection by a qualified professional engineer no later than fourteen months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections. The owner or operator of the CCR unit shall conduct the inspection required by this subdivision on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of this paragraph, the owner or operator has completed an inspection ~~when~~if the inspection report has been submitted to the department and placed in the facility's operating record.

(5) If a deficiency or release is identified during an inspection, the owner or operator shall notify the department and remedy the deficiency or release in accordance with applicable requirements in subsections 6 through ~~9~~8 of section 33.1-20-08-06.

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-06. Ground water monitoring and corrective action.

1. Applicability.

a. Existing CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the ground water monitoring and corrective action requirements of this section~~, except as provided in subdivision f~~.

b. Initial time frames.

(1) Existing CCR landfills and existing CCR surface impoundments. The owner or operator of the CCR unit shall include with the permit ~~modification application required by subsection 9 of section 33.1-20-08-02~~, a ground water monitoring plan showing compliance with the following ground water monitoring requirements:

(a) Install the ground water monitoring system as required by subsection 2;

(b) Develop the ground water sampling and analysis program to include selection of the statistical procedures to be used for evaluating ground water monitoring data as required by subsection 3;

(c) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by subsection 4; and

(d) Begin evaluating the ground water monitoring data for statistically significant increases over background levels for the constituents listed in appendix I of this chapter as required by subsection 4.

(2) New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units. The owner or operator shall include a ground water monitoring plan with the application for a new permit or permit modification to show compliance with the ground water monitoring requirements specified in subparagraphs a and b of paragraph 1 prior to initial receipt of CR by the CCR unit. In addition, the owner or operator of the CCR unit shall initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by subsection 4.

c. Once a ground water monitoring system and ground water monitoring program ~~has~~have been established at the CCR unit as required by this section, the owner or operator shall conduct ground water monitoring and, if necessary, corrective action throughout the active life and postclosure care period of the CCR unit.

d. In the event of a release from a CCR unit, the owner or operator immediately shall take all necessary measures to control the source of the release so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit shall comply with all applicable requirements in subsections 6 through 8~~, or, if eligible, must comply with the requirements in subsection 9~~.

e. Annual ground water monitoring and corrective action report. For existing CCR landfills and existing CCR surface impoundments, no later than January thirty-first of the year following July 1, 2020, and January thirty-first of each year thereafter, the owner or operator ~~must~~shall prepare an annual ground water monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator ~~must~~shall prepare the initial annual ground water monitoring and corrective action report no later than January thirty-first of the year following the calendar year a ground water monitoring system has been established, and January thirty-first of each year thereafter. For the preceding calendar year, the annual report must document the status of the ground water monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this section, the owner or operator has prepared the annual report ~~when~~if the report is placed in the facility's operating record. The annual report must be submitted to the department for approval and placed on the facility's publicly accessible internet site by March first of each year. At a minimum, the

annual ground water monitoring and corrective action report must contain the following information, to the extent available:

(1) A map, aerial image, or diagram showing the CCR unit and all background (or upgradient) and downgradient monitoring wells, to include the well identification numbers, that are part of the ground water monitoring program for the CCR unit;

(2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

(3) In addition to all the monitoring data obtained under this section, a summary including the number of ground water samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

(4) A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituents detected at a statistically significant increase over background levels); and

(5) Other information required to be included in the annual report as specified in this section.

~~f. Suspension of ground water monitoring requirements.~~

~~(1) The department may suspend the ground water monitoring requirements of this section for a CCR unit for up to ten years if the owner or operator provides written documentation that there is no potential for migration of the constituents listed in appendices I and II to this chapter from that CCR unit to the uppermost aquifer during the active life of the CCR unit and the postclosure care period. This demonstration must be certified by a qualified professional engineer and approved by the department, and must be based upon:~~

~~(a) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, including at a minimum, the information necessary to evaluate or interpret the effects of the following properties or processes on contaminant fate and transport:~~

~~[1] Aquifer characteristics, including hydraulic conductivity, hydraulic gradient, effective porosity, aquifer thickness, degree of saturation, stratigraphy, degree of fracturing and secondary porosity of soils and bedrock, aquifer heterogeneity, ground water discharge, and ground water recharge areas;~~

~~[2] Waste characteristics, including quantity, type, and origin;~~

~~[3] Climatic conditions, including annual precipitation, leachate generation estimates, and effects on leachate quality;~~

~~[4] Leachate characteristics, including leachate composition, solubility, density, the presence of immiscible constituents, Eh, and pH; and~~

~~[5] Engineered controls, including liners, cover systems, and aquifer controls (e.g., lowering the water table). These must be evaluated under design and failure conditions to estimate their long-term residual performance.~~

~~(b) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.~~

~~(2) The owner or operator of the CCR unit may secure an additional ten years for the suspension of the ground water monitoring requirements provided the owner or operator provides written documentation that there continues to be no potential for migration. The documentation must be supported by, at a minimum, by the same information required for the initial monitoring suspension and must be certified by a qualified professional engineer and approved by the department. The owner or operator shall submit the documentation of their re-demonstration for the department's review and approval of their extension one year before their ground water monitoring suspension is due to expire. If the existing ground water monitoring extension expires, the owner or operator shall begin ground water detection monitoring according to this section within ninety days. The owner or operator may obtain additional ten-year ground water monitoring suspensions provided the owner or operator continues to make the written demonstration. The owner or operator shall place each completed demonstration, if more than one ten-year suspension period is sought, in the facility's operating record.~~

(6) A section at the beginning of the annual report that provides an overview of the current status of ground water monitoring and corrective action programs for the CCR unit. At a minimum, the summary must specify all of the following:

(a) At the start of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in subsection 4 or the assessment monitoring program in subsection 5;

(b) At the end of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in subsection 4 or the assessment monitoring program in subsection 5;

(c) If it was determined that there was a statistically significant increase over background for one or more constituents listed in appendix I to this chapter pursuant to subdivision e of subsection 4:

[1] Identify those constituents listed in appendix I to this chapter and the names of the monitoring wells associated with such an increase; and

[2] Provide the date when the assessment monitoring program was initiated for the CCR unit.

(d) If it was determined that there was a statistically significant level above the ground water protection standard for one or more constituents listed in appendix II to this chapter pursuant to subdivision g of subsection 5 include all of the following:

[1] Identify the constituents listed in appendix II to this chapter and the names of the monitoring wells associated with such an increase;

[2] Provide the date when the assessment of corrective measures was initiated for the CCR unit;

[3] Provide the date when the public meeting was held for the assessment of corrective measures for the CCR unit; and

[4] Provide the date when the assessment of corrective measures was completed for the CCR unit.

(e) Whether a remedy was selected pursuant to subsection 7 during the current annual reporting period, and if so, the date of remedy selection; and

(f) Whether remedial activities were initiated or are ongoing pursuant to subsection 8 during the current annual reporting period.

2. Ground water monitoring systems.

a. Performance standard. The owner or operator of a CCR unit shall install a ground water monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) Accurately represent the quality of background ground water that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:

(a) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or

(b) Sampling at other wells will provide an indication of background ground water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of ground water passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of ground water contamination in the uppermost aquifer. All potential contaminant pathways must be monitored.

b. The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that must include thorough characterization of:

(1) Aquifer thickness, ground water flow rate, ground water flow direction including seasonal and temporal fluctuations in ground water flow; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

c. The ground water monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in ~~paragraph~~subdivision a, based on the site-specific information specified in ~~paragraph~~subdivision b. The ground water monitoring system must contain:

(1) A minimum of one upgradient and three downgradient monitoring wells; and

(2) Additional monitoring wells as necessary to accurately represent the quality of background ground water that has not been affected by leakage from the CCR unit and the quality of ground water passing the waste boundary of the CCR unit.

d. The owner or operator of multiple CCR units may install a multiunit ground water monitoring system instead of separate ground water monitoring systems for each CCR unit. The multiunit ground water monitoring system must be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual ground water monitoring system for each CCR unit based on the following factors:

(1) Number, spacing, and orientation of each CCR unit;

(2) Hydrogeologic setting;

(3) Site history; and

(4) Engineering design of the CCR unit.

e. Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground water samples. The annular space (i.e., the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator of the CCR unit shall document and include in the ground water monitoring plan and the operating record the design, installation, development, and decommissioning of any monitoring wells; piezometers; and other measurement, sampling, and analytical devices.

(2) The monitoring wells; piezometers; and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

f. The owner or operator shall provide documentation in the ground water monitoring plan that the ground water monitoring system has been designed and constructed to meet the requirements of this section. If the ground water monitoring system includes the minimum number of monitoring wells specified in this subsection, the ground water monitoring plan must document the basis for supporting this determination. Any proposed changes to the ground water monitoring plan must be submitted to, and approved by, the department.

3. Ground water sampling and analysis requirements.

a. The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the background and downgradient wells. The owner or operator of the CCR unit must develop a sampling and analysis program that includes procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground water samples. For purposes of this section, the term constituent refers to both hazardous constituents and other monitoring parameters listed in either appendix I or II of this chapter.

c. Ground water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator of the CCR unit shall determine the rate and direction of ground water flow each time ground water is sampled. ~~ground~~Ground water elevations in wells which monitor the same CCR management area

must be measured within a period of time short enough to avoid temporal variations in ground water flow which could preclude accurate determination of ground water flow rate and direction.

d. The owner or operator of the CCR unit shall establish background ground water quality in hydraulically upgradient or background wells for each of the constituents required in the particular ground water monitoring program that applies to the CCR unit as determined under subsections 4 or 5. Background ground water quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of paragraph 1 of subdivision a of subsection 2.

e. The number of samples collected when conducting detection monitoring and assessment monitoring, for both downgradient and background wells, must be consistent with the statistical procedures chosen under subdivision f and the performance standards under subdivision g of this subsection. The sampling procedures must be those specified under subsection 4 for detection monitoring, subsection 5 for assessment monitoring, and subsection 6 for corrective action monitoring.

f. The owner or operator of the CCR unit shall select one of the statistical methods specified in paragraphs 1 through 5 to be used in evaluating ground water monitoring data for each specified constituent. The statistical test chosen must be conducted separately for each constituent in each monitoring well.

(1) A parametric analysis of variance followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure, in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of subdivision g.

(6) The owner or operator of the CCR unit shall include documentation in the ground water monitoring plan showing that the selected statistical method is appropriate for evaluating the ground water monitoring data for the CCR management area. The documentation must include a narrative description of the statistical method selected to evaluate the ground water monitoring data.

g. Any statistical method chosen must comply with the following performance standards, as appropriate, based on the statistical test method used:

(1) The statistical method used to evaluate ground water monitoring data must be appropriate for the distribution of constituents. Normal distributions of data values m use parametric methods. Nonnormal distributions must use nonparametric methods. If the distribution of the constituents is shown by the owner or operator of the CCR unit to be inappropriate for a normal theory test, then the data must be transformed

or a distribution-free (nonparametric) theory test must be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground water protection standard, the test must be done at a type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the type I experiment wise error rate for each testing period must be no less than 0.05; however, the type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground water monitoring data, the specific type of control chart and its associated parameter values must be such that this approach is at least as effective as any other approach in this section for evaluating ground water data. The parameter values must be determined after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be such that this approach is at least as effective as any other approach in this section for evaluating ground water data. These parameters must be determined after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method must account for data below the limit of detection with one or more statistical procedures that shall be at least as effective as any other approach in this section for evaluating ground water data. Any practical quantization limit that is used in the statistical method must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method must include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

h. The owner or operator of the CCR unit shall determine if there is a statistically significant increase over background values for each constituent required in the particular ground water monitoring program that applies to the CCR unit.

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the ground water quality of each constituent at each downgradient monitoring well to the background value of that constituent, according to the statistical procedures and performance standards specified under subdivisions f and g.

(2) Within ninety days after completing sampling and analysis, the owner or operator shall determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.

i. The owner or operator ~~must~~shall measure "total recoverable metals" concentrations in measuring ground water quality. Measurement of total recoverable metals captures both the particulate fraction and dissolved fraction of metals in natural waters. ~~ground~~Ground water samples may not be field-filtered prior to analysis.

4. Detection monitoring program.

a. The owner or operator of a CCR unit shall conduct detection monitoring at all ground water monitoring wells consistent with this subsection. At a minimum, a detection monitoring program must include ground water monitoring for all constituents listed in appendix I to this chapter.

b. Except as provided in subdivision d, the monitoring frequency for the constituents listed in appendix I to this chapter must be at least semiannual during the active life of the CCR unit and the postclosure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well must be collected and analyzed for the constituents listed in appendices I and II to this chapter no later than six months after July 1, 2020. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, a minimum of eight independent samples for each background well must be collected and analyzed for the constituents listed in appendices I and II to this chapter during the first six months of sampling, if not already completed.

c. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with subdivision e of subsection 3 and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well.

d. The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix I to this chapter during the active life and the postclosure care period based on the availability of ground water. If there is not adequate ground water flow to sample wells semiannually, the alternative frequency ~~shall~~must be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis and approved by the department. ~~The demonstration must be supported by:~~

(1) ~~Information~~The demonstration must be supported by information documenting that the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone; and

(c) Ground water flow rates.

(2) ~~Information~~The demonstration must be supported by information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a time frame that will not materially delay establishment of an assessment monitoring program.

(3) The owner or operator must obtain approval by the department for an alternative ground water sampling and analysis frequency. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency in the annual ground water monitoring and corrective action report required by this section.

e. If the owner or operator of the CCR unit determines ~~that~~ there is a statistically significant increase over background levels for one or more of the constituents listed in appendix I to this chapter at any monitoring well at the waste boundary the owner or operator shall:

(1) Except as provided for in paragraph 2, within ninety days of detecting a statistically significant increase over background levels for any constituent, notify the department and establish an assessment monitoring program meeting the requirements of subsection 5.

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. The owner or operator shall complete the written demonstration within ninety days of detecting a statistically significant increase over background levels. If a successful demonstration is completed within the ninety-day period, the owner or operator of the CCR unit shall continue with a detection monitoring program under this section, with approval by the department. If a successful demonstration is not completed within the ninety-day period, the owner or operator of the CCR unit shall initiate an assessment monitoring program as required under subsection 5. The owner or operator also shall include the demonstration in the annual ground water monitoring and corrective action report.

(3) The owner or operator of a CCR unit shall prepare a notification stating that an assessment monitoring program has been established. The owner or operator has completed the notification ~~when~~if the notification is submitted to the department and placed in the facility's operating record.

5. Assessment monitoring program.

a. Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix I to this chapter.

b. Within ninety days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit shall sample and analyze the ground water for all constituents listed in appendix II to this chapter. The number of samples collected and analyzed for each well during each sampling event must be consistent with subdivision e of subsection 3, and must account for any unique characteristics of the site, but must be at least one sample from each well.

c. The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix II to this chapter during the active life and the postclosure care period based on the availability of ground water. If there is not adequate ground water flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency must be evaluated on a site-specific basis. ~~The demonstration must be supported by:~~

(1) ~~Information~~The demonstration must be supported by information documenting the need for less frequent sampling. The alternative frequency must be based on consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone; and

(c) Ground water flow rates.

(2) ~~Information~~The demonstration must be supported by information documenting that the alternative frequency will be no less effective in ensuring that any leakage from

the CCR unit will be discovered within a time frame that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator shall obtain approval by the department for an alternative ground water sampling and analysis frequency. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency in the annual ground water monitoring and corrective action report required by this section.

d. After obtaining the results from the initial and subsequent sampling events required in subdivision b, the owner or operator ~~must~~shall:

(1) Within ninety days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells in the monitoring system, conduct analyses for all parameters in appendices I and II to this chapter that are detected in response to subdivision b, and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with subdivision e of subsection 3, and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well;

(2) Establish ground water protection standards for all constituents detected pursuant to subdivision b or d. The ground water protection standards must be established in accordance with subdivision h of this subsection; and

(3) Include the recorded concentrations required by the assessment monitoring program, identify the background concentrations established under the detection monitoring program, and identify the ground water protection standards in the annual ground water monitoring and corrective action report.

e. If the concentrations of all constituents listed in appendices I and II to this chapter are shown to be at or below background values, using the statistical procedures in subdivision g of subsection 3, for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit with approval by the department. The owner or operator shall prepare a notification stating that detection monitoring is resuming for the CCR unit. The owner or operator has completed the notification ~~when~~if the notification is submitted to the department and placed in the facility's operating record.

f. If the concentrations of any constituent in appendices I and II to this chapter are above background values, but all concentrations are below the established ground water protection standard, using the statistical procedures in subdivision g or subsection 3, the owner or operator must continue assessment monitoring in accordance with this section.

g. If one or more constituents in appendix II to this chapter are detected at statistically significant levels above the established ground water protection standard in any sampling event, the owner or operator shall prepare a notification identifying the constituents in appendix II to this chapter that have exceeded the ground water protection standard. The owner or operator has completed the notification when the notification is submitted to the department and placed in the facility's operating record. ~~The owner or operator of the CCR unit also shall:~~

(1) ~~Characterize~~The owner or operator of the CCR unit also shall characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization must be sufficient to support a

complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to subsection 6. Characterization of the release includes the following minimum measures:

(a) Install additional monitoring wells necessary to define the contaminant plume or plumes;

(b) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix II to this chapter and the levels at which they are present in the material released;

(c) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph 1 of subdivision d; and

(d) Sample all wells in accordance with paragraph 1 of subdivision d to characterize the nature and extent of the release.

(2) ~~Notify~~The owner or operator of the CCR unit also shall notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated offsite. The owner or operator has completed the notifications when they are placed in the facility's operating record.

(3) Within ninety days of finding that any of the constituents listed in appendix II to this chapter have been detected at a statistically significant level exceeding the ground water protection standards the owner or operator must either:

(a) Initiate an assessment of corrective measures as required by subsection 6; or

(b) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. Any such demonstration must be supported by a report that includes the factual or evidentiary basis for any conclusions and must be approved by the department. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to this subsection and may return to detection monitoring if the constituents in appendices I and II to this chapter are at or below the established background. The owner or operator also shall include the demonstration in the annual ground water monitoring and corrective action report.

(4) If a successful demonstration has not been made at the end of the ninety-day period provided by subparagraph b of paragraph 3, the owner or operator of the CCR unit shall initiate the assessment of corrective measures requirements under subsection 6.

~~(5) If an assessment of corrective measures is required and if the CCR unit is an existing unlined CCR surface impoundment, then the CCR unit is subject to the closure requirements under subdivision a of subsection 2 of section 33.1- 20-08-07 to retrofit or close. In addition, the owner or operator shall prepare a notification stating that an assessment of corrective measures has been initiated.~~

h. The ground water protection standard for each constituent in appendix II to this chapter detected in the ground water must be:

(1) The maximum contaminant level for constituents for which ~~an~~a maximum contaminant level has been established under chapter 33.1-17-01; or

(2) ~~For the following constituents:~~

~~(a) Cobalt - 6 micrograms per liter (ug/ l);~~

~~(b) Lead - 15 ug/l;~~

~~(c) Lithium - 40 ug/l; and~~

~~(d) Molybdenum - 100 ug/l.; or~~

~~(3)~~ The background concentration for constituents for which the background level is higher than the maximum contaminant level or the levels identified in paragraph 2 of this subdivision.

6. Assessment of corrective measures.

a. Within ninety days of finding that any constituent listed in appendix II to this chapter has been detected at a statistically significant level exceeding the ground water protection standard, or immediately upon detection of a release from a CCR unit, the owner or operator shall initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected areas to original conditions. The assessment of corrective measures must be completed within ninety days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstance and obtains approval by the department. The ninety-day deadline to complete the assessment of corrective measures may be extended for no longer than sixty days. The owner or operator also shall include the demonstration and approval in the annual ground water monitoring and corrective action report.

b. The owner or operator of the CCR unit shall continue to monitor ground water in accordance with the assessment monitoring program.

c. The assessment of corrective measures must include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subsection 7, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy; and

(3) The institutional requirements, such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy.

d. The assessment has been completed ~~when~~if it is approved by the department and placed in the facility's operating record.

e. The owner or operator shall discuss the results of the corrective measures assessment at least thirty days prior to the selection of remedy, in a public meeting with interested and affected parties.

7. Selection of remedy.

a. Based on the results of the corrective measures assessment, the owner or operator shall, as soon as feasible, select a remedy. This requirement applies to, not in place of, any applicable standards under the Occupational Safety and Health Act of 1970 [Public Law 91-596; 84 Stat. 1590]. The owner or operator shall prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator shall prepare a final report describing the selected remedy and how it meets the standards specified in this subsection. The report has been completed when it is approved by the department and placed in the operating record.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground water protection standard as specified pursuant to subdivision h of subsection 5~~, or attain a risk-based ground water concentration that is protective of human health and the environment~~;

(3) Control the sources of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix II to this chapter into the environment;

(4) Remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible, taking into account factors such as avoiding inappropriate disturbance of sensitive ecosystems;

(5) Comply with standards for management of wastes as specified in subdivision d of subsection 8.

c. In selecting a remedy that meets the standards of this subsection, the owner or operator of the CCR unit shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedies, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(a) Magnitude of reduction of existing risks;

(b) Magnitude of residual risks in terms of likelihood of further releases due to CCR remaining following implementation of a remedy;

(c) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(d) Short-term risks that might be posed to the community or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal of contaminant;

(e) Time until full protection is achieved;

(f) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(g) Long-term reliability of the engineering and institutional controls; and

(h) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(a) The extent to which containment practices will reduce further releases; and

(b) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:

(a) Degree of difficulty associated with constructing the technology;

(b) Expected operational reliability of the technologies;

(c) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(d) Availability of necessary equipment and specialists; and

(e) Available capacity and location of needed treatment, storage, and disposal services.

(4) The degree to which community concerns are addressed by a potential remedy.

d. The owner or operator shall specify as part of the selected remedy a schedule for implementing and completing remedial activities. Such a schedule must require the completion of remedial activities within a reasonable period of time, taking into consideration:

(1) Extent and nature of contamination;

(2) Reasonable probabilities of remedial technologies in achieving compliance with ground water protection standards and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for CCR managed during implementation of the remedy;

(4) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(5) Resource value of the aquifer, including:

(a) Current and future uses;

(b) Proximity and withdrawal rate of users;

(c) Ground water quantity and quality;

(d) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to CCR constituents;

(e) The hydrogeologic characteristic of the facility and surrounding land; and

(f) The availability of alternative water supplies; and

(6) Other relevant factors.

~~e. The department may determine that remediation of a release of a constituent listed in appendix II to this chapter from a CCR unit is not necessary if the owner or operator demonstrates to the satisfaction of the department that:~~

~~(1) The ground water is additionally contaminated by substances that have originated from a source other than a CCR unit and those substances are present in concentrations such that cleanup of the release from the CCR unit would provide no significant reduction in risk to actual or potential receptors; or~~

~~(2) The constituent is present in ground water that:~~

~~(a) Is not currently or reasonably expected to be a source of drinking water; and~~

~~(b) Is not hydraulically connected with waters to which the constituent is migrating or are likely to migrate in a concentration that would exceed the ground water protection standards; or~~

~~(3) Remediation of the release is technically impracticable; or~~

~~(4) Remediation results in unacceptable cross-media impacts.~~

~~f. A determination by the department that remediation of a release is not necessary may not affect the requirement under subdivision b for the owner or operator to undertake source control measures or other measures, including closure if triggered, that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate the ground water to concentrations that are technically feasible and significantly reduce threats to human health or the environment.~~

8. Implementation of the corrective action program.

   a. Within ninety days of selecting a remedy under subsection 7, the owner or operator shall initiate remedial activities. Based on the schedule established under subdivision d of subsection 7, for implementation and completion of remedial activities the owner or operator shall:

      (1) Establish and implement a corrective action ground water monitoring program that:

         (a) Meets the requirements of an assessment monitoring program under subsection 5;

         (b) Documents the effectiveness of the corrective action remedy; and

         (c) Demonstrates compliance with the ground water protection standards.

      (2) Implement the selected corrective action remedy; and

      (3) Take any interim measures necessary to reduce the contaminants leaching from the CCR unit and potential exposures to human or ecological receptors. Interim measures must, to the greatest extent feasible, be consistent with the objectives of, and contribute to the performance of, any remedy that may be required pursuant to subsection 7. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

         (a) Time required to develop and implement a final remedy;

         (b) Actual or potential exposure of nearby populations or environmental receptors to any of the constituents listed in appendix II to this chapter;

(c) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(d) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(e) Weather conditions that may cause any of the constituents listed in appendix II to this chapter to migrate or be released;

(f) Potential for exposure to any of the constituents listed in appendix II to this chapter as a result of an accident or failure of a container or handling system; and

(g) Other situations that may pose threats to human health and the environment.

b. If an owner or operator of the CCR unit, determines, at any time, that compliance with the requirements of subdivision b of subsection 7 is not being achieved through the remedy selected, the owner or operator shall implement other methods or techniques that could feasibly achieve compliance with the requirements.

c. Remedies selected pursuant to subsection 7 must be considered complete ~~when~~if:

(1) The owner or operator of the CCR unit demonstrates that compliance with the ground water protection standards has been achieved at all points within the plume of contamination that lie beyond the ground water monitoring well system established under subsection 2;

(2) ~~Except as provided by paragraph 4, compliance~~Compliance with the ground water protection standards has been achieved by demonstrating that concentrations of constituents listed in appendix II to this chapter have not exceeded the ground water protection standards for a period of three consecutive years using the statistical procedures and performance standards in subdivisions f and g of subsection 3; and

(3) All actions required to complete the remedy have been satisfied.

~~(4) The department may specify an alternative length of time to that specified in paragraph 2 during which the owner or operator must demonstrate that concentrations of constituents listed in appendix II to this chapter have not exceeded the ground water protection standards taking into consideration:~~

~~(a) Extent and concentration of the release;~~

~~(b) Behavior characteristics of the constituents in the ground water;~~

~~(c) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and~~

~~(d) Characteristics of the ground water.~~

d. All CCR that are managed pursuant to a remedy required under subsection 7, or an interim measure required under paragraph 3 of subdivision a, shall be managed in a manner that complies with all applicable requirements under this article and North Dakota Century Code chapter 23.1-08.

e. Upon completion of the remedy, the owner or operator shall prepare a notification stating that the remedy has been completed. The owner or operator shall obtain a certification from a qualified professional engineer or a qualified environmental professional that the

remedy has been completed. The report has been completed ~~when~~if it is approved by the department and placed in the operating record.

~~9. Corrective action procedures to remedy eligible nonground water releases.~~

~~a. General. This subsection specifies the corrective action requirements that apply to nonground water releases from CCR units that can be completely remediated within one hundred eighty days from the detection of the release. A release is completely remediated when a qualified professional engineer or a qualified environmental professional completes the certification required in paragraph 3 of subdivision c and the corrective action report is approved by the department. If the owner or operator determines, at any time, that the release will not be completely remediated within this one hundred eighty-day time frame, the owner or operator shall comply with all additional requirements specified in subsections 6, 7, and 8.~~

~~b. Corrective action requirements. Upon detection of a nonground water release from a CCR unit, the owner or operator shall comply with all of the following requirements:~~

~~(1) Immediately take all necessary measures to control all sources of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment;~~

~~(2) Determine the corrective measures that will meet the substantive standards in subdivision a of subsection 6 to prevent further releases, to remediate any releases, and to restore the affected area to original conditions;~~

~~(3) Analyze the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described in subdivision c of subsection 6;~~

~~(4) Select the corrective action that will remedy the nonground water release, taking into account the results of the assessment in this subdivision and the factors specified in subdivision c of subsection 7;~~

~~(5) Remediate the nonground water release to meet the standards specified in subdivision b of subsection 7; and~~

~~(6) Complete the remedy within one hundred eighty days of the date of discovery of the release.~~

~~c. Required notices and reports. An owner or operator of a CCR unit that complies with the requirements of this subsection to remediate a nonground water release shall ensure that the notices and reports specified in this subdivision are completed. All required notices and reports must be signed by the owner or operator.~~

~~(1) Within fifteen days of discovering a nonground water release, the owner or operator shall prepare a notification of discovery of a nonground water release. The owner or operator has completed the notification when it has been placed in the facility's operating record and submitted to the department.~~

~~(2) Within fifteen days of completing the analysis of the effectiveness of potential corrective measures, place the completed analysis in the facility's operating record and submit to the department.~~

~~(3) Within thirty days of completion of a corrective action of a nonground water release, the owner or operator shall prepare a report documenting the completion of the corrective action. The report must describe the nature and extent of the nonground~~

~~water release, the CCR units responsible for the nonground water release, and how the remedy selected achieves the corrective action requirements specified in this subsection. The notification must include a certification by a qualified professional engineer or a qualified environmental professional that the corrective action has been completed. The owner or operator has completed the report when it has been approved by the department and placed in the facility's operating record.~~

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-07. Closure and postclosure care.

1. Inactive CCR surface impoundments.

   a. Inactive CCR surface impoundments are subject to all of the requirements of this chapter applicable to existing CCR surface impoundments.

   b. The owner or operator of an inactive CCR surface impoundment shall include documentation of the requirements of this subdivision with the permit ~~modification~~ application required by subsection 9 of section 33.1-20-08-02.

      (1) Recordkeeping, notification, and internet requirements. The owner and operator shall:

         (a) ~~The owner or operator must have prepared and placed~~Prepare and place a notification of intent to initiate closure of the inactive CCR surface impoundment in the facility's operating record;

         (b) ~~The owner or operator must have provided~~Provide notification of the intent to initiate closure of the inactive CCR surface impoundment to the department; and

         (c) ~~The owner or operator must have placed~~Place the notification of intent to initiate closure of the inactive CCR surface impoundment on its CCR website.

      (2) Location restrictions.

         (a) The owner or operator of the inactive CCR surface impoundment shall:

            [1] Complete the demonstration for placement above the uppermost aquifer as set forth by subsection 1 of section 33.1-20-08-03;

            [2] Complete the demonstration for wetlands as set forth by subsection 2 of section 33.1-20-08-03;

            [3] Complete the demonstration for fault areas as set forth by subsection 3 of section 33.1-20-08-03;

            [4] Complete the demonstration for seismic impact zones as set forth by subsection 4 of section 33.1-20-08-03;

            [5] Complete the demonstration for unstable areas as set forth by subsection 5 of section 33.1-20-08-03.

         (b) An owner or operator of an inactive CCR surface impoundment who fails to demonstrate compliance with the requirements of subparagraph a is subject to the closure requirements of paragraph 1 of subdivision b of subsection 2.

(3) Design criteria. The owner or operator of the inactive CCR surface impoundment shall:

(a) Complete the documentation of liner type as set forth by subdivision a of subsection 2 of section 33.1-20-08-04.

(b) Place on or immediately adjacent to the CCR unit the permanent identification marker as set forth by paragraph 1 of subdivision a of subsection 3 of section 33.1-20-08-04.

(c) Prepare and maintain an emergency action plan as set forth by paragraph 3 of subdivision a of subsection 3 of section 33.1-20-08-04.

(d) Compile information relating to construction as set forth by subdivision c of subsection 3 of section 33.1-20-08-04.

(e) Complete the initial hazard potential classification, structural stability, and safety factor assessments as set forth by paragraph 2 of subdivision a and subdivisions d and e of subsection 3 of section 33.1-20-08-04.

(4) Operating criteria. The owner or operator of the inactive CCR surface impoundment shall:

(a) Prepare the initial CCR fugitive dust control plan as set forth in subsection 1 of section 33.1-20-08-05.

(b) Prepare the initial inflow design flood control system plan as set forth in subsection 3 of section 33.1-20-08-05.

(c) Initiate the inspections by a qualified person as set forth by subsection 4 of section 33.1-20-08-05.

(d) Complete the initial annual inspection by a qualified professional engineer set forth in subsection 4 of section 33.1-20-08-05.

(5) Ground water monitoring and corrective action. The owner or operator of the inactive CCR surface impoundment shall:

(a) Comply with ground water monitoring requirements set forth in subdivision b of subsection 1 of section 33.1-20-08-06 and subdivision b of subsection 4 of section 33.1-20-08-06; and

(b) Prepare the initial ground water monitoring and corrective action report as set forth in subdivision e of subsection 1 of section 33.1-20-08-06.

(6) Closure and postclosure care. The owner or operator of the inactive CCR surface impoundment shall:

(a) Prepare an initial written closure plan as set forth in subdivision b of subsection 3; and

(b) Prepare an initial written postclosure care plan as set forth in subdivision d of subsection 5.

2. Closure or retrofit of CCR units.

a. ~~The owner or operator of an existing unlined CCR surface impoundment, as determined under subdivision a of subsection 2 of section 33.1-20-08-04, is subject to the requirements of paragraph 1.~~

~~(1) Except as provided by paragraph 3, an owner or operator of an existing unlined CCR surface impoundment shall cease placing CCR and non-CCR waste streams into the unlined CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of subsection 3.~~

~~(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with paragraph 1 shall include a statement in the notification required under subdivision g of subsection 3 or paragraph 5 of subdivision j of subsection 3, that the CCR surface impoundment is closing or retrofitting under the requirements of paragraph 1.~~

~~(3) The time frame specified in paragraph 1 does not apply if the owner or operator complies with the alternative closure procedures specified in subsection 4.~~

~~(4) At any time after the initiation of closure under paragraph 1, the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of subdivision j of subsection 3~~[Reserved].

b. The owner or operator of an existing CCR surface impoundment is subject to the requirements of paragraph 1.

(1) Noncompliance with location standards.

(a) ~~Placement above the uppermost aquifer. Except as provided by paragraph 4, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in subsection 1 of section 33.1-20-08-03, shall cease placing CCR and non-CCR waste streams into such CCR unit no later than October 31, 2020, and close the CCR unit in accordance with the requirements of subsection 3~~[Reserved].

(b) Wetlands, fault areas, seismic impact zones and unstable areas. Except as provided by paragraph 4, within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in subsections 2 through 5 of section 33.1-20-08-03, the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR waste streams into such CCR unit and close the CCR unit in accordance with the requirements of subsection 3.

(2) Within six months of ~~either~~ failing to complete the initial or any subsequent periodic safety factor assessment required by subdivision e of subsection 3 of section 33.1-20-08-04 by the deadlines specified in subdivision f of subsection 3 of section 33.1-20-08-04 or failing to document that the calculated factors of safety for the existing CCR surface impoundment achieve the minimum safety factors specified in subdivision e of subsection 3 of section 33.1-20-08-04, the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR waste streams into such CCR unit and close the CCR unit in accordance with the requirements of subsection 3.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with paragraphs 1 or 2 shall include a statement in the closure notification required under subdivision g of subsection 3 that the CCR surface impoundment is closing under the requirements.

(4) The time frame specified in paragraph 1 does not apply if the owner or operator complies with the alternative closure procedures specified in subsection 4.

c. The owner or operator of a new CCR surface impoundment is subject to the requirements of paragraph 1.

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by subdivision e of subsection 3 of section 33.1-20-08-04 by the deadlines specified in subdivision f of subsection 3 of section 33.1-20-08-04 or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in subdivision e of subsection 3 of section 33.1-20-08-04, the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR waste streams into such CCR unit and close the CCR unit in accordance with the requirements of subsection 3.

(2) An owner or operator of a new CCR surface impoundment that closes in accordance with paragraph 1 shall include a statement in the closure notification required under subdivision g of subsection 3 that the CCR surface impoundment is closing under the requirements of this subdivision.

d. The owner or operator of an existing CCR landfill is subject to the requirements of paragraph 1.

(1) Except as provided by paragraph 3, within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in subsection 5 of section 33.1-20-08- 03, the owner or operator of the CCR unit must cease placing CCR and non-CCR waste streams into that landfill and close the CCR unit in accordance with the requirements of subsection 3.

(2) An owner or operator of an existing CCR landfill that closes in accordance with paragraph 1 shall include a statement in the closure notification required under subdivision g of subsection 3 of this section that the CCR landfill is closing under the requirements of this subdivision.

(3) The time frame specified in paragraph 1 does not apply if the owner or operator complies with the alternative closure procedures specified in subsection 4.

3. Criteria for conducting the closure or retrofit of CCR units.

a. Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in subdivisions b through i. Retrofit of a CCR surface impoundment must be completed in accordance with the requirements in subdivision j.

b. Written closure plan.

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and generally accepted good engineering practices. The written closure plan must include:

(a) A narrative description of how the CCR unit will be closed in accordance with this subsection.

(b) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with subdivision c.

(c) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system and the methods and procedures to be used to install the final cover. The closure plan must also discuss how the final cover system will achieve the performance standards specified in subdivision d.

(d) An estimate of the maximum inventory of CCR ever onsite over the active life of the CCR unit.

(e) An estimate of the largest area of the CCR unit ever requiring a final cover at any time during the CCR unit's active life.

(f) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule ~~should~~must provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones, such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated time frames to complete each step or phase of CCR unit closure. ~~When~~Upon preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the time frames specified in paragraph 1 of subdivision f of this subsection, the written closure plan must include the site-specific information, factors and considerations that would support any time extension sought under paragraph 2 of subdivision f.

(2) Time frames for preparing the initial written closure plan.

(a) Existing CCR units. The owner or operator of the CCR unit shall include the initial written closure plan consistent with the requirements specified in paragraph 1 with the application for a permit~~ modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02~~.

(b) New CCR units and any lateral expansion of a CCR unit. The owner or operator shall include an initial written closure plan consistent with the requirements specified in paragraph 1 with the application for a new permit or permit modification.

(c) The owner or operator has completed the written closure plan ~~when~~if the plan, including the certification required by paragraph 4, has been approved by the department and placed in the facility's operating record.

(3) Amendment of a written closure plan.

(a) The owner or operator may amend the initial or any subsequent written closure plan at any time with approval by the department.

(b) The owner or operator shall amend the written closure plan whenever:

[1] There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

[2] Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan.

(c) The owner or operator shall amend the closure plan at least sixty days prior to a planned change in the operation of the facility or CCR unit, or no later than sixty days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator shall amend the current closure plan no later than thirty days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written closure plan meets the requirements of this subsection.

c. Closure by removal of CCR. An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. ~~Coal combustion residuals~~The CCR removal and decontamination of the CCR unit are complete ~~when~~if constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and ground water monitoring concentrations do not exceed the established ground water protection standards for constituents listed in appendix II to this chapter.

d. Closure performance standard when leaving CCR in place.

(1) The owner or operator of a CCR unit shall ensure that, at a minimum, the CCR unit is closed in a manner that will:

(a) Control, minimize, or eliminate, to the maximum extent feasible, postclosure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(b) Preclude the probability of future impoundment of water, sediment, or slurry;

(c) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and postclosure care period;

(d) Minimize the need for further maintenance of the CCR unit; and

(e) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) Drainage and stabilization of CCR surface impoundments. Prior to installing the final cover system, the owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall:

(a) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues.

(b) Stabilize remaining wastes sufficiently to support the final cover system.

(3) Final cover system. If a CCR unit is closed by leaving CCR in place, the owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of subparagraph a, or the requirements of the alternative final cover system specified in subparagraph b. The design of the final cover system must be included in the written closure plan.

(a) The final cover system must be designed and constructed to meet these criteria:

[1] The infiltration of liquids through the closed CCR unit must be minimized by the use of an infiltration layer that contains a minimum of eighteen inches [45.7 centimeters] of earthen material. The saturated hydraulic conductivity of the infiltration layer must be no greater than 1 x 10^{-7} centimeters per second.

[2] A second layer of twelve inches [30.5 centimeters] or more of clay-rich soil material suitable for serving as a plant root zone must be placed over the compacted layer. This layer is not required if the CCR unit contains only bottom ash.

[3] The erosion of the final cover system must be minimized by the use of an erosion layer that contains a minimum of six inches [15.2 centimeters] of suitable plant growth material over the covered CCR unit and the facility planted with adapted grasses. The total depth of final cover must be three feet [91.4 centimeters] or more unless the CCR unit contains only bottom ash, in which case the total depth of final cover must be two feet [61.0 centimeters] or more.

[4] The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(b) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet these criteria:

[1] The design of the final cover system must include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in items 1 and 2 of subparagraph a or an average long-term percolation rate less than 0.2 inches [5.0 millimeters] per year.

[2] The design of the final cover system must include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in item 3 of subparagraph a.

[3] The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(c) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the design of the final cover system meets the requirements of this section.

~~(4) Use of CCR in design and construction of final cover system.~~

~~(a) This paragraph specifies the allowable uses of CCR in the closure of CCR units closing pursuant to subsection 2. Coal combustion residuals may be placed in such units with approval by the department, but only for the purposes of grading and contouring in the design and construction of the final cover system.~~

~~(b) The owner or operator of a CCR unit shall meet all of the following criteria when placing CCR within a CCR unit for the purposes of grading or contouring:~~

~~[1] The CCR placed for construction of the final cover system must have been generated at the facility and be located at the facility at the time closure was initiated;~~

~~[2] For incised CCR surface impoundments the CCR must be placed entirely above the highest elevation of the surrounding natural ground surface where the CCR surface impoundment was constructed;~~

~~[3] For all other CCR units, CCR must be placed entirely above the highest elevation of CCR in the unit, following dewatering and stabilization;~~

~~[4] The CCR must not be placed outside the plane extending vertically from the line formed by the intersection of the crest of the CCR surface impoundment and the upstream slope of the CCR surface impoundment; and~~

~~[5] The final cover system must be constructed with either:~~

~~[a] A slope not steeper than five percent grade after allowance for settlement; or~~

~~[b] At a steeper grade, if the department determines that the steeper slope is necessary based on conditions at the site, to facilitate runoff and minimize erosion, and that side slopes are evaluated for erosion potential based on a stability analysis to evaluate possible erosion potential. The stability analysis, at a minimum, must evaluate the site geology; characterize soil shear strength; construct a slope stability model; establish ground water and seepage conditions, if any; select loading conditions; locate critical failure surface; and iterate until minimum factor of safety is achieved.~~

e. Initiation of closure activities. Except as provided for in paragraph 5 and subsection 4, the owner or operator of a CCR unit ~~must~~shall commence closure of the CCR unit no later than the applicable time frames specified in either paragraph 1, 2, or 3.

(1) The owner or operator shall commence closure of the CCR unit no later than thirty days after the date on which the CCR unit either:

(a) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(b) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2) Except as provided by paragraph 3, the owner or operator shall commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(3) Notwithstanding paragraph 2, the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation to the department that the CCR unit will continue to accept wastes or will start removing CCR for beneficial use. The documentation must be supported by, at a minimum, the information specified in subparagraphs a and b. The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that

the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for beneficial use. The owner or operator shall submit each completed demonstration to the department and place it in the facility's operating record prior to the end of any two-year period.

(a) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(b) Information demonstrating that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative must include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in items 1 through 4 are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

[1] Normal plant operations include periods ~~during which~~when the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

[2] The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled (e.g., CCR is not being generated) and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

[3] The CCR unit is dedicated to an operating coal-fired boiler (i.e., CCR is being generated); however, no CCR is being placed in the CCR unit because the CCR is being entirely diverted to beneficial uses, but there is a reasonable likelihood that the CCR unit will ~~again~~ be used in the foreseeable future.

[4] The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will ~~again~~ receive non-CCR waste streams in the future.

(c) ~~In order to~~To obtain additional time extensions to initiate closure of a CCR unit beyond the first two years provided by paragraph 2, the owner or operator of the CCR unit shall include with the demonstration required by this subdivision the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(4) For purposes of this chapter, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(a) Taken any steps necessary to implement the written closure plan required by ~~paragraph~~subdivision b;

(b) Submitted a completed application for any required state or agency permit or permit modification; or

(c) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(5) The time frames specified in paragraphs 1 and 2 do not apply to any owners or operators of CCR units under closure as required by subdivisions a through d of subsection 2.

f. Completion of closure activities.

(1) Except as provided for in paragraphs 2 and 3, the owner or operator shall complete closure of the CCR unit:

(a) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(b) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2) Extensions of closure time frames. With approval by the department, the time frames for completing closure of a CCR unit specified under paragraph 1 may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required time frames due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by subdivision b, the demonstration must include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record prior to the end of any two-year period. Factors that may support such a demonstration include:

(a) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(b) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(c) The geology and terrain surrounding the CCR unit will affect the amount of material needed to close the CCR unit; or

(d) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

(3) Maximum time extensions.

(a) CCR surface impoundments of forty acres [16.2 hectares] or smaller may extend the time to complete closure by no longer than two years.

(b) CCR surface impoundments larger than forty acres [16.2 hectares] may extend the time frame to complete closure of the CCR unit multiple times, in two-year

increments. For each two-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(c) CCR landfills may extend the time frame to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator ~~must~~shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(4) In order to obtain additional time extensions to complete closure of a CCR unit beyond the times provided by paragraph 1, the owner or operator of the CCR unit shall include with the demonstration required by paragraph 2 the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(5) Upon completion, the owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer verifying that closure has been completed in accordance with the closure plan specified in subdivision b and the requirements of this subsection.

g. Before starting closure of a CCR unit, the owner or operator shall prepare a notification of intent to close a CCR unit. The notification must include the certification by a qualified professional engineer for the design of the final cover system as required by subparagraph c of paragraph 3 of subdivision d, if applicable. The owner or operator has completed the notification ~~when~~if it has been submitted to the department and placed in the facility's operating record.

h. Within thirty days of completion of closure of the CCR unit, the owner or operator shall prepare a notification of closure of a CCR unit. The notification must include the certification by a qualified professional engineer required by paragraph 5 of subdivision f. The owner or operator has completed the notification ~~when~~if it has been submitted to the department and placed in the facility's operating record.

i. Deed notations.

(1) Except as provided by paragraph 4, following closure of a CCR unit, the owner or operator shall record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(a) The land has been used as a CCR unit; and

(b) Its use is restricted under the postclosure care requirements as provided by subparagraph c of paragraph 1 of subdivision d of subsection 5.

(3) Within sixty days of recording a notation on the deed to the property, the owner or operator shall submit a notification to the department stating that the deed notation

has been recorded. The owner or operator has completed the notification ~~when~~if it has been placed in the facility's operating record.

(4) An owner or operator that closes a CCR unit by removal of all CCR materials in accordance with subdivision c is not subject to the requirements of paragraphs 1 through 3.

j. Criteria to retrofit an existing CCR surface impoundment.

(1) To retrofit an existing CCR surface impoundment, the owner or operator must:

(a) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and

(b) Comply with the requirements in subdivision b of subsection 2 of section 33.1-20-08-04.

(c) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of this chapter, including the requirement to conduct any necessary corrective action.

(2) Written retrofit plan.

(a) Content of the plan. The owner or operator shall prepare a written retrofit plan for approval by the department that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan must include:

[1] A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with this section.

[2] A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.

[3] An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.

[4] An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.

[5] A schedule for completing all activities necessary to satisfy the retrofit criteria in this section, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(b) Time frames for preparing the initial written retrofit plan.

[1] No later than sixty days prior to the date of initiating retrofit activities, the owner or operator shall prepare the initial written retrofit plan. For purposes of this chapter, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

[a] Taken any steps necessary to implement the written retrofit plan;

[b] Submitted a completed application for a permit or permit modification; or

[c] Taken any steps necessary to comply with any state standards that are a prerequisite, or are otherwise applicable, to initiating or completing the retrofit of a CCR unit.

[2] The owner or operator has completed the written retrofit plan ~~when~~if the plan, including the certification required by subparagraph d, has been approved by the department and placed in the facility's operating record.

(c) Amendment of a written retrofit plan.

[1] The owner or operator may amend the initial or any subsequent written retrofit plan at any time with approval by the department.

[2] The owner or operator shall amend the written retrofit plan whenever:

[a] There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or

[b] Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

[3] The owner or operator shall amend the retrofit plan at least sixty days prior to a planned change in the operation of the facility or CCR unit, or no later than sixty days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator shall amend the current retrofit plan no later than thirty days following the triggering event.

(d) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of this section.

(3) Deadline for completion of activities related to the retrofit of a CCR unit. Any CCR surface impoundment that is being retrofitted must complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in subdivision f or, where applicable, subsection 4.

(4) Upon completion, the owner or operator shall obtain a certification from a qualified professional engineer verifying that the retrofit activities have been completed in accordance with the retrofit plan.

(5) Before initiating the retrofit of a CCR unit, the owner or operator shall prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been submitted to the department and placed in the facility's operating record.

(6) Within thirty days of completing the retrofit activities the owner or operator shall prepare a notification of completion of retrofit activities. The notification must include the certification by a qualified professional engineer as required by paragraph 4. The owner or operator has completed the notification when it has been submitted to the department and placed in the facility's operating record.

(7) At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of this subsection.

4. ~~Alternative closure requirements. The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to subdivisions a, b, or d of subsection 2 may continue to receive CCR or non-CCR waste streams in the unit provided the owner or operator meets the requirements of either subdivision a, b, or c and receives approval by the department.~~

~~a. No alternative CCR disposal capacity.~~

~~(1) Notwithstanding the provisions of subdivisions a, b, or d of subsection 2, a CCR unit may continue to receive CCR if the owner or operator of the CCR unit certifies that the CCR shall continue to be managed in that CCR unit due to the absence of alternative disposal capacity both onsite and offsite of the facility. To qualify under this paragraph, the owner or operator of the CCR unit shall document that all of the following conditions have been met:~~

~~(a) No alternative disposal capacity is available onsite or offsite. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;~~

~~(b) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator shall arrange to use such capacity as soon as feasible;~~

~~(c) The owner or operator shall remain in compliance with all other requirements of this chapter, including the requirement to conduct any necessary corrective action; and~~

~~(d) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.~~

~~(2) Once alternative capacity is available, the CCR unit must cease receiving CCR and initiate closure following the time frames in subdivisions e and f of subsection 3.~~

~~(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit must cease receiving CCR and close in accordance with the time frames in subdivisions e and f of subsection 3.~~

~~b. No alternative capacity for non-CCR waste streams.~~

~~(1) Notwithstanding the provisions of subdivisions a, b, or d of subsection 2, a CCR unit may continue to receive non-CCR waste streams if the owner or operator of the CCR unit certifies that the waste streams must continue to be managed in that CCR unit due to the absence of alternative capacity both onsite and offsite the facility. For these non-CCR waste streams, capacity means the capacity of impoundments, tanks, and other conveyances to manage daily flows currently handled by the unit. To qualify under this paragraph, the owner or operator of the CCR unit shall document that all of the following conditions have been met for each non-CCR waste stream that will continue to be received by the CCR unit:~~

~~(a) No alternative disposal capacity is available. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;~~

~~(b) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection requires that efforts to~~

~~obtain additional capacity were made at the earliest date that an owner or operator knew, or had reason to know, that such a unit may become subject to closure under subdivisions a, b, or d of subsection 2. Qualification under this subsection lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator shall arrange to use such capacity as soon as feasible;~~

~~(c) The owner or operator shall remain in compliance with all other requirements of this chapter, including the requirement to conduct any necessary corrective action; and~~

~~(d) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative capacity for the given waste stream.~~

~~(2) Once alternative capacity is available for a given waste stream, the CCR unit must cease receiving that waste stream, and in the case that alternate capacity has been found for all waste streams, the facility shall initiate closure of the CCR unit following the time frames in subdivisions e and f of subsection 3.~~

~~(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit must cease receiving all waste streams and close in accordance with the time frames in subdivisions e and f of subsection 3.~~

~~c. Permanent cessation of a coal-fired boiler by a date certain.~~

~~(1) Notwithstanding the provisions of subdivisions a, b, or d of subsection 2, a CCR unit may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the time frames specified in paragraphs 2 through 4, but in the interim period, prior to closure of the coal-fired boiler, the facility must continue to use the CCR unit due to the absence of alternative disposal capacity both onsite and offsite of the facility. For wastewaters capacity means the capacity of impoundments, tanks, and other units to manage daily flows currently handled by the unit closing. To qualify under this paragraph, the owner or operator of the CCR unit shall document that all of the following conditions have been met:~~

~~(a) No alternative disposal capacity is available onsite or offsite. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section.~~

~~(b) The owner or operator shall remain in compliance with all other requirements of this chapter, including the requirement to conduct any necessary corrective action; and~~

~~(c) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.~~

~~(2) For a CCR surface impoundment that is forty acres [16.2 hectares] or smaller, the coal-fired boiler must cease operation and the CCR surface impoundment must have completed closure no later than October 17, 2023.~~

~~(3) For a CCR surface impoundment that is larger than forty acres [16.2 hectares], the coal-fired boiler must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028.~~

~~(4) For a CCR landfill, the coal-fired boiler must cease operation, and the CCR landfill must complete closure no later than April 19, 2021.~~

~~d. Required notices and progress reports. An owner or operator of a CCR unit that closes in accordance with subparagraphs a, b, or c must complete the following notices and progress reports and submit them to the department:~~

~~(1) Within six months of becoming subject to closure pursuant to subdivisions a, b, or d of subsection 2, the owner or operator shall prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of this subsection. The notification must describe why the CCR unit qualifies for the alternative closure provisions, in addition to providing the documentation and certifications required by subdivisions a, b, or c.~~

~~(2) The owner or operator shall prepare the periodic progress reports in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports must be completed according to the following schedule:~~

~~(a) The first annual progress report must be prepared no later than thirteen months after completing the notification of intent to comply with the alternative closure requirements.~~

~~(b) The second annual progress report must be prepared no later than twelve months after completing the first annual progress report. Additional annual progress reports must be prepared within twelve months of completing the previous annual progress report.~~

~~(c) The owner or operator has completed the progress reports specified in this paragraph when the reports are placed in the facility's operating record.~~

~~(3) An owner or operator of a CCR unit also shall prepare the notification of intent to close a CCR unit as required by subdivision g of subsection 3~~[Reserved].

5. Postclosure care requirements.

a. Applicability.

(1) Except as provided by paragraph 2, this subsection applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under subsection 3.

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by subdivision c of subsection 3 is not subject to the postclosure care criteria under this subsection.

b. Postclosure care maintenance requirements. Following closure of the CCR unit, the owner or operator shall conduct postclosure care for the CCR unit, which must consist of at least the following:

(1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) If the CCR unit is subject to the design criteria under subsection 1 of section 33.1-20-08-04, maintaining the integrity and effectiveness of the leachate collection and removal system and operating the leachate collection and removal system; and

(3) Maintaining the ground water monitoring system and monitoring the ground water in accordance with the requirements of section 33.1-20-08-06.

c. Postclosure care period.

(1) Except as provided by paragraphs 2 and 3, the owner or operator of the CCR unit shall conduct postclosure care for thirty years.

(2) If at the end of the postclosure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with subsection 5 of section 33.1-20-08-06, the owner or operator shall continue to conduct postclosure care until the owner or operator returns to detection monitoring in accordance with subdivision e of subsection 5 of section 33.1-20-08-06 or subparagraph b of paragraph 3 of subdivision g of subsection 5 of section 33.1-20-08-06.

~~(3) The department may establish an alternate postclosure period upon a determination that the alternate period is sufficient to protect human health and the environment.~~

~~(a) To reduce the postclosure care period, the department must ensure that the postclosure care period is long enough to establish settlement behavior and to detect to wear-in defects in the cover system. At a minimum, the department must consider the type of cover placed on the unit (e.g., geosynthetic clay liner) and the placement of the ground water monitoring wells with respect to the waste management units and the ground water table.~~

~~(b) A determination that a reduced postclosure care period is warranted does not affect the obligation to comply with subdivision b.~~

d. Written postclosure plan.

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written postclosure plan that includes:

(a) A description of the monitoring and maintenance activities required in subdivision b for the CCR unit, and the frequency at which these activities will be performed;

(b) The name, address, telephone number, and email address of the person or office to contact about the facility during the postclosure care period; and

(c) A description of the planned uses of the property during the postclosure period. Postclosure use of the property may not disturb the integrity of the final cover, liner, or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this chapter. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration must be certified by a qualified professional engineer, and notification must be provided to the department that the demonstration has been placed in the operating record and on the owner's or operator's publicly accessible internet site.

(2) Deadline to prepare the initial written postclosure plan.

(a) Existing CCR landfills and existing CCR surface impoundments. The owner or operator of the CCR unit shall include the initial written closure plan consistent with the requirements specified in paragraph 1 with the application for a permit ~~modification that meets the requirements of this chapter within twenty-four months of July 1, 2020, as required by subsection 9 of section 33.1-20-08-02~~.

(b) New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit. The owner or operator shall include an initial written postclosure plan consistent with the requirements specified in paragraph 1 with the application for a new permit or permit modification.

(c) The owner or operator has completed the written postclosure plan when the plan has been approved by the department and placed in the facility's operating record.

(3) Amendment of a written postclosure plan.

(a) The owner or operator may amend the initial or any subsequent written postclosure plan developed pursuant to paragraph 1 at any time with approval by the department.

(b) The owner or operator shall amend the written closure plan whenever:

[1] There is a change in the operation of the CCR unit that would substantially affect the written postclosure plan in effect; or

[2] After postclosure activities have commenced, unanticipated events necessitate a revision of the written postclosure plan.

(c) The owner or operator shall amend the written postclosure plan at least sixty days prior to a planned change in the operation of the facility or CCR unit, or no later than sixty days after an unanticipated event requires the need to revise an existing written postclosure plan. If a written postclosure plan is revised after postclosure activities have commenced for a CCR unit, the owner or operator shall amend the written postclosure plan no later than thirty days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written postclosure plan meets the requirements of this subsection.

e. Notification of completion of postclosure care period. No later than sixty days following the completion of the postclosure care period, the owner or operator of the CCR unit shall prepare a notification verifying that postclosure care has been completed. The notification must include the certification by a qualified professional engineer verifying that postclosure care has been completed in accordance with the closure plan specified in subdivision d and the requirements of this subsection. The owner or operator has completed the notification ~~when~~if it has been approved by the department and placed in the facility's operating record.

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-03, 23.1-08-04

33.1-20-08-08. Recordkeeping, notification, and posting of information to the internet.

1. Recordkeeping requirements.

   a. Each owner or operator of a CCR unit subject to the requirements of this chapter shall maintain files of all information required by this section in a written operating record at their facility.

   b. Unless specified otherwise, each file must be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.

   c. An owner or operator of more than one CCR unit subject to the provisions of this chapter may comply with the requirements of this section in one recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.

   d. The owner or operator of a CCR unit subject to this chapter shall submit to the department any demonstration or documentation required by this chapter, if requested.

   e. Location standards. The owner or operator of a CCR unit subject to this chapter shall place the demonstrations documenting whether or not the CCR unit is in compliance with the requirements under subsections 1 through 5 of section 33.1- 20-08-03, as they become available, in the facility's operating record.

   f. Design criteria. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:

      (1) The design and construction certifications as required by subdivisions b and c of subsection 1 of section 33.1-20-08-04.

      (2) The documentation of liner type as required by paragraph 1 of subdivision a of subsection 2 of section 33.1-20-08-04.

      (3) The design and construction certifications as required by paragraphs 2 and 3 of subdivision b of subsection 2 of section 33.1-20-08-04.

      (4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by paragraph 1 of subdivision a of subsection 3 of section 33.1-20-08-04.

      (5) The initial and periodic hazard potential classification assessments as required by paragraph 2 of subdivision a of subsection 3 of section 33.1-20- 08-04.

      (6) The emergency action plan, and any amendment of the emergency action plan, as required by paragraph 3 of subdivision a of subsection 3 of section 33.1-20- 08-04, except that only the most recent emergency action plan must be maintained in the facility's operating record and publicly accessible CCR website.

      (7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders as required by item 5 of subparagraph a of paragraph 3 of subdivision a of subsection 3 of section 33.1-20-08-04.

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by subparagraph e of paragraph 3 of subdivision a of subsection 3 of section 33.1-20-08-04.

(9) The history of construction, including design and construction plans, and any revisions of it, as required by subdivision c of subsection 3 of section 33.1-20-08-04, except that these files must be maintained until the CCR unit completes closure of the unit in accordance with subsection 3 of section 33.1-20-08-07.

(10) The initial and periodic structural stability assessments as required by subdivision d of subsection 3 of section 33.1-20-08-04.

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by paragraph 2 of subdivision d of subsection 3 of section 33.1-20-08-04.

(12) The initial and periodic safety factor assessments as required by paragraph 2 of subdivision e of subsection 3 of section 33.1-20-08-04.

g. Operating criteria. The owner or operator of a CCR unit subject to this chapter must place the following information, as it becomes available, in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by subdivision b of subsection 1 of section 33.1-20-08-05, except that only the most recent control plan must be maintained in the facility's operating record and publicly accessible CCR website.

(2) The annual CCR fugitive dust control report required by subdivision c of subsection 1 of section 33.1-20-08-05.

(3) The initial and periodic run-on and run-off control system plans as required by subdivision c of subsection 2 of section 33.1-20-08-05.

(4) The initial and periodic inflow design flood control system plan as required by subdivision c of subsection 3 of section 33.1-20-08-05.

(5) Documentation recording the results of each impoundment inspection and instrumentation monitoring by a qualified person as required by subdivision a of subsection 4 of section 33.1-20-08-05.

(6) The periodic impoundment inspection report as required by paragraph 2 of subdivision b of subsection 4 of section 33.1-20-08-05.

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by paragraph 5 of subdivision b of subsection 4 of section 33.1-20-08-05 and by paragraph 5 of subdivision b of subsection 5 of section 33.1-20-08-05.

(8) Documentation recording the results of the weekly landfill inspection by a qualified person as required by subdivision a of subsection 5 of section 33.1- 20-08-05.

(9) The periodic landfill inspection report as required by paragraph 2 of subdivision b of subsection 5 of section 33.1-20-08-05.

h. Ground water monitoring and corrective action. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:

(1) The annual ground water monitoring and corrective action report as required by subdivision e of subsection 1 of section 33.1-20-08-06.

(2) Documentation of the design, installation, development, and decommissioning of any monitoring wells; piezometers; and other measurement, sampling, and analytical devices as required by paragraph 1 of subdivision e of subsection 2 of section 33.1-20-08-06.

(3) The ground water monitoring system certification as required by subdivision f of subsection 2 of section 33.1-20-08-06.

(4) The selection of a statistical method certification as required by paragraph 6 subdivision f of subsection 3 of section 33.1-20-08-06.

(5) Within thirty days of establishing an assessment monitoring program, the notification as required by paragraph 3 subdivision e of subsection 4 of section 33.1-20-08-06.

(6) The results of appendices I and II to this chapter constituent concentrations as required by paragraph 1 subdivision d of subsection 5 of section 33.1-20- 08-06.

(7) Within thirty days of returning to a detection monitoring program, the notification as required by subdivision e of subsection 5 of section 33.1-20-08- 06.

(8) Within thirty days of detecting one or more constituents in appendix II to this chapter at statistically significant levels above the ground water protection standard, the notifications as required by subdivision g of subsection 5 of section 33.1-20-08-06.

(9) ~~Within thirty days of initiating the assessment of corrective measures requirements, the notification as required by paragraph 5 subdivision g of subsection 5 of section 33.1-20-08-06.~~

~~(10)~~ The completed assessment of corrective measures as required by subdivision d of subsection 6 of section 33.1-20-08-06.

~~(11)~~(10) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by subdivision e of subsection 6 of section 33.1-20-08-06.

~~(12)~~(11) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by subdivision a of subsection 7 of section 33.1-20-08-06, except that the selection of remedy report must be maintained until the remedy has been completed.

~~(13)~~(12) Within thirty days of completing the remedy, the notification as required by subdivision e of subsection 8 of section 33.1-20-08-06.

~~(14) The demonstration, including long-term performance data, supporting the suspension of ground water monitoring requirements as required by subdivision f of subsection 1 of section 33.1-20-08-06.~~

~~(15) The notification of discovery of a nonground water release as required by paragraph 1 subdivision c of subsection 9 of section 33.1-20-08-06.~~

~~(16) The report documenting the completion of the corrective action as required by paragraph 2 of subdivision c of subsection 9 of section 33.1-20-08-06.~~

i. Closure and postclosure care. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:

(1) The notification of intent to initiate closure of the CCR unit as required by paragraph 1 of subdivision b of subsection 1 of section 33.1-20-08-07 and subdivision g of subsection 3 of section 33.1-20-08-07.

(2) The annual progress reports of closure implementation as required by paragraph 2 of subdivision d of subsection 4 of section 33.1-20-08-07.

(3) The notification of closure completion as required by subdivision h of subsection 3 of section 33.1-20-08-07.

(4) The written closure plan, and any amendment of the plan, as required by subdivision b of subsection 3 of section 33.1-20-08-07, except that only the most recent closure plan must be maintained in the facility's operating record and publicly accessible CCR website.

(5) The written demonstrations, including the certification required by paragraph 3 of subdivision e of subsection 3 of section 33.1-20-08-07, for a time extension for initiating closure as required by subparagraph c of paragraph 3 of subdivision e of subsection 3 of section 33.1-20-08-07.

(6) The written demonstrations, including the certification required by paragraph 4 of subdivision f of subsection 3 of section 33.1-20-08-07, for a time extension for initiating closure as required by subparagraph d of paragraph 2 of subdivision f of subsection 3 of section 33.1-20-08-07.

(7) The notification of intent to close a CCR unit as required by subdivision g of subsection 3 of section 33.1-20-08-07.

(8) The notification of completion of closure of a CCR unit as required by subdivision h of subsection 3 of section 33.1-20-08-07.

(9) The notification recording a notation on the deed as required by subdivision i of subsection 3 of section 33.1-20-08-07.

(10) The notification of intent to comply with the alternative closure requirements as required by paragraph 1 of subdivision d of subsection 4 of section 33.1- 20-08-07.

(11) The annual progress reports under the alternative closure requirements as required by paragraph 2 of subdivision d of subsection 4 of section 33.1-20- 08-07.

(12) The written postclosure plan, and any amendment of the plan, as required by subdivision d of subsection 5 of section 33.1-20-08-07, except that only the most recent closure plan must be maintained in the facility's operating record and publicly accessible CCR website.

(13) The notification of completion of postclosure care period as required by subdivision e of subsection 5 of section 33.1-20-08-07.

~~(14) The demonstration, including long-term performance data supporting the reduced postclosure care period as required by paragraph 3 of subdivision c of subsection 5 of section 33.1-20-08-07.~~

j. Retrofit criteria. The owner or operator of a CCR unit subject to this chapter shall place the following information, as it becomes available, in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by paragraph 2 of subdivision j of subsection 3 of section 33.1-20-08-07, except that only the most recent retrofit plan must be maintained in the facility's operating record and publicly accessible CCR website.

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures as required by paragraph 1 of subdivision d of subsection 4 of section 33.1-20-08-07.

(3) The annual progress reports required under the alternative requirements as required by paragraph 2 of subdivision d subsection 4 of section 33.1-20-08- 07.

(4) The written demonstrations, including the certification in paragraph 4 of subdivision f of subsection 3 of section 33.1-20-08-07, for a time extension for completing retrofit activities as required by paragraph 3 of subdivision j of subsection 3 of section 33.1-20-08-07.

(5) The notification of intent to initiate retrofit of a CCR unit as required by paragraph 5 of subdivision j of subsection 3 of section 33.1-20-08-07.

(6) The notification of completion of retrofit activities as required by paragraph 6 of subdivision j of subsection 3 of section 33.1-20-08-07.

2. Record submission requirements.

a. The submittals required under subdivision e of this subsection must be sent to the department before the close of business on the day the submittal is required to be completed. For purposes of this section, before the close of business means the submittal must be postmarked or sent by electronic mail. If a deadline falls on a weekend or state holiday, the deadline is automatically extended to the next business day.

b. If any CCR unit is located in part within Indian country, notifications of submittals required by this section must be sent to the appropriate tribal authority.

c. Submittals may be combined as long as the deadline requirement for each submittal is met. Submittals may be included in a permit application, plan of operation, ground water monitoring plan, corrective action plan, report, or application for modification of any of these documents, as applicable.

d. Unless otherwise required in this section, the submittals specified in this section must be sent to the department within thirty days of placing in the facility's operating record. If the department does not approve any of the documents, the owner or operator of the CCR unit shall modify the document and resubmit it to the department for approval. The final approved document must be placed in the facility operating record and on the publicly accessible CCR website within thirty days of approval by the department and the unapproved document must be removed.

e. All documents, plans, assessments, demonstrations, certifications, and reports placed in the facility operating record and on the publicly accessible CCR website, as specified in subdivisions e through j of subsection 1, must be submitted to the department, except:

(1) Documentation of the permanent identification marker specified under paragraph 4 of subdivision f of subsection 1.

(2) Documentation of the results of each weekly impoundment inspection by a qualified person as specified under paragraph 5 of subdivision g of subsection 1.

(3) Documentation of the results of each weekly landfill inspection by a qualified person as specified under paragraph 8 of subdivision g of subsection 1.

(4) Documentation of the design, installation, development, and decommissioning of any monitoring wells; piezometers; and other measurement, sampling, and analytical devices as specified under paragraph 2 of subdivision h of subsection 1.

(5) The results of appendices I and II to this chapter constituent concentrations as specified under paragraph 6 of subdivision h of subsection 1.

(6) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment specified under paragraph 11 of subdivision h of subsection 1.

3. Publicly accessible internet site requirements.

a. Each owner or operator of a CCR unit subject to the requirements of this chapter shall maintain a publicly accessible internet site (CCR website) containing the information specified in subdivision e. The owner's or operator's website must be titled "CCR Rule Compliance Data and Information". The website must ensure that all information required to be posted is immediately available to anyone visiting the site, without requiring any prerequisite, such as registration or a requirement to submit a document request. All required information must be clearly identifiable and must be able to be printed immediately and downloaded by anyone accessing the site. If the owner or operator changes the web address (i.e., uniform resource locator) at any point, the owner or operator must notify the United States environmental protection agency (EPA) via the "contact us" form on EPA's CCR website and the department within fourteen days of making the change. The facility's CCR website also must have a "contact us" form or a specific electronic mail address posted on the website for the public to use to submit questions and issues relating to the availability of information on the website.

b. An owner or operator of more than one CCR unit subject to the provisions of this chapter may comply with the requirements of this section by using the same Internet site for multiple CCR units provided the CCR website clearly delineates information by the name or identification number of each unit.

c. Unless otherwise required in this chapter, the information required to be posted to the CCR website must be made available to the public for as long as it is required to be in the facility operating record.

d. Unless otherwise required in this chapter, the information must be posted to the CCR website within thirty days of placing the pertinent information required by subsection 1 in the operating record.

e. Each owner or operator shall place on the facility's publicly accessible CCR website all documents, plans, assessments, demonstrations, certifications, and reports placed in the facility operating record and approved by the department as specified in subdivisions e through j of subsection 1, except:

(1) Documentation of the permanent identification marker specified under paragraph 4 of subdivision f of subsection 1.

(2) Documentation of the results of each weekly impoundment inspection by a qualified person as specified under paragraph 5 of subdivision g of subsection 1.

(3) Documentation of the results of each weekly landfill inspection by a qualified person as specified under paragraph 8 of subdivision g of subsection 1.

(4) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as specified under paragraph 2 of subdivision h of subsection 1.

(5) The results of appendices I and II to this chapter constituent concentrations as specified under paragraph 6 of subdivision h of subsection 1.

(6) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment specified under paragraph ~~11~~10 of subdivision h of subsection 1.

History: Effective July 1, 2020; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03
Law Implemented: NDCC 23.1-08-03, 23.1-08-04

CHAPTER 33.1-20-08.1

33.1-20-08.1-01. Performance and design criteria.

In addition to the requirements of section 33.1-20-04.1-09, the owner or operator of a surface impoundment shall comply with the following:

1. Applicability.

   a. The design, construction, and operating standards of this section are applicable to surface impoundments that store or treat solid waste, sludges containing free liquids, free liquids containing high concentrations of dissolved solids, or liquids derived from processing or handling solid waste.

   b. The standards of this section are not applicable to the following units:

      (1) Surface impoundments which treat wastewater, the discharge of which is subject to federal, state, or local water pollution discharge permits;

      (2) Surface impoundments which handle agricultural waste generated by farming operations;

      (3) Lime sludge settling basins;

      (4) Basins used to collect and store storm water runoff;

      (5) Oil and gas exploration and production waste regulated under North Dakota Century Code section 38-08-04; and

      (6) CCR surface impoundments subject to chapter 33.1-20-08.

2. The owner or operator ~~must~~shall design, construct, and operate each surface impoundment so as to:

   a. Comply with the surface water and ground water protection standards of chapter 33.1-20-13;

   b. ~~New~~Require new units ~~must~~to have a compacted soil liner of a minimum four feet [1.22 meters] of 1 x 10^{-7} centimeters per second or lesser hydraulic conductivity or any combination of soil liner thickness, underlying soil thickness and hydraulic conductivity, or a flexible membrane liner which would control the migration of waste or waste constituents during the active life of the surface impoundment and, for surface impoundments closed with solid waste in place, during the postclosure period;

   c. Have dikes designed to maintain their structural integrity under conditions of a leaking liner and capable of withstanding erosion; and

   d. Have the freeboard equal to or greater than two feet [61.0 centimeters] to avoid overtopping from wave action or precipitation.

3. Monitoring and inspection.

   a. While a surface impoundment is in operation, it must be inspected by the owner or operator monthly and after storms to detect evidence of any of the following:

      (1) Deterioration, malfunctions, or improper operation of control systems;

      (2) Sudden drops in the level of the impoundment's contents; and

(3) Severe erosion, seepage, or other signs of deterioration in dikes or other containment devices.

b. Prior to placing a surface impoundment into operation or prior to renewed operation after six months or more during which the impoundment was not in service, a qualified professional engineer must certify that the impoundment's dike and liner have structural integrity.

4. Emergency repairs and contingency plans.

a. When a malfunction occurs in the waste containment system which can cause a release to land or water, a surface impoundment must be removed from service and the owner or operator ~~must~~shall take the following actions:

(1) Immediately shut down the flow of additional waste into the impoundment;

(2) Immediately stop the leak and contain the waste which has been released;

(3) Take steps to prevent catastrophic failure;

(4) If a leak cannot be stopped, empty the impoundment;

(5) Clean up all released waste and any contaminated materials; and

(6) Notify the department of the problem within twenty-four hours after detecting the problem.

b. As part of the contingency plan, the owner or operator ~~must~~shall specify a procedure for complying with the requirements of subdivision a of this subsection.

c. No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:

(1) If the impoundment was removed from service as the result of actual or imminent dike failure, the owner or operator ~~must~~shall certify the dike's structural integrity; and

(2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, the owner or operator shall take the following actions ~~must be taken~~:

(a) For any existing portion of the impoundment without a liner, a liner must be installed; and

(b) For any portion of the impoundment that is lined, the liner must be repaired and the owner or operator ~~must~~shall certify that the repaired liner meets the design specification approved in the permit.

d. A surface impoundment, that has been removed from service in accordance with the requirements of this subsection and that is not repaired within six months, must be closed in accordance with the provisions of sections 33.1-20-04.1-05 and 33.1-20-04.1-09.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-08.1-02. Closure and postclosure criteria.

In addition to the requirements of section 33.1-20-04.1-09, at closure, the owner or operator shall complete the following:

1. Remove all standing liquids, waste and waste residues, the liners and leak detection system, and any underlying and surrounding contaminated soil. The site then must ~~then~~ be reclaimed by regrading the site, replacing all suitable plant growth material, and properly revegetating the site; and

2. If all impoundment materials are not removed as provided in subsection 1, the owner ~~must~~or operator shall treat remaining liquids, residues, and soils by removal of liquids, drying, or other means and then close the impoundment and provide postclosure as provided for an industrial waste landfill under section ~~33.1-20-01.1-02~~33.1-20-07.1-02.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-14
FINANCIAL ASSURANCE REQUIREMENTS

Section
33.1-20-14-01 Financial Assurance for Solid Waste Disposal Facilities
33.1-20-14-02 Cost Estimates for Closure and Postclosure
33.1-20-14-03 Financial Assurance Mechanism for Closure and Postclosure
33.1-20-14-04 Implementation of Financial Assurance for Closure and Postclosure
33.1-20-14-05 Financial Assurance for Corrective Action
33.1-20-14-06 Liability Requirements for Industrial Waste Landfills
33.1-20-14-07 Specific Requirements of Mechanisms for Financial Assurance
33.1-20-14-08 Release of the Owner or Operator from the Requirements of this ~~Section~~Chapter

33.1-20-14-02. Cost estimates for closure and postclosure.

1. Each owner or operator shall prepare separate written closure and postclosure estimates of the costs of hiring a third party to complete identified activities of the facility closure and postclosure plans.

   a. The initial cost estimates must be in current dollars, and cost estimates must be adjusted annually for inflation.

   b. The cost estimate for closure must equal the cost of closing the largest area requiring a final cover during the active life of the facility.

   c. The owner or operator ~~must~~shall increase the cost estimates if changes in the closure plan or postclosure plan increase the maximum costs of closure or postclosure care, respectively. The owner or operator may reduce a cost estimate for closure if it exceeds the maximum costs of closure during the remaining life of the facility or a cost estimate for postclosure care if it exceeds the maximum costs of postclosure during the remaining postclosure period.

   d. The cost estimate for postclosure must account for the total costs of postclosure care over the entire postclosure period, including the most expensive costs of postclosure during the postclosure period.

2. Each owner or operator shall prepare a new closure or postclosure cost estimate whenever any of the following occurs:

   a. Changes in operating plans or facility design affect the closure or postclosure plans;

   b. There is a change in the expected year of closure; ~~and~~or

   c. The department directs the owner or operator to revise the closure or postclosure plan.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-03. Financial assurance mechanism for closure and postclosure.

1. Each owner or operator of an applicable solid waste disposal facility shall establish one or more financial assurance mechanisms which together total an amount equal to the closure cost estimate or postclosure cost estimate prepared in accordance with section 33.1-20-14-02.

2. An owner or operator may satisfy the requirements for financial assurance for both closure and postclosure care by using a trust fund, surety bond, letter of credit, insurance, financial

test, or corporate guarantee. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a single mechanism had been established and maintained for financial assurance of closure and of postclosure care.

3. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust ~~funds~~fund, surety ~~bonds~~bond, ~~letters~~letter of credit, ~~and~~ insurance, financial test, and corporate guarantee. The mechanisms must be specified in this section, except that it is the combination of mechanisms, rather than the single mechanism which must provide financial assurance for an amount at least equal to the current closure or postclosure, or both, cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The department may use any or all of the mechanisms to provide for closure or postclosure, or both, care of the facility.

4. Each financial assurance mechanism must be approved by the department. The following financial assurance mechanisms are acceptable, provided respective requirements of section 33.1-20-14-07 are met:

   a. Trust fund;

   b. Surety bond;

   c. ~~Irrevocable letter~~Letter of credit;

   d. ~~Financial test~~Insurance;

   e. ~~Insurance policy~~Financial test; and

   f. Corporate guarantee.

5. A trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee~~, financial test, or insurance policy~~ may be terminated or canceled only if alternate financial assurance is substituted or if the owner or operator is released from the requirement by the department.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-04. Implementation of financial assurance for closure and postclosure.

1. The closure plan and postclosure plan required by this article must specify the financial assurance mechanisms required by this chapter and, if a trust fund, surety bond, or insurance ~~policy~~, the methods and schedules for funding the mechanisms.

2. During the active life of the facility, the owner or operator shall adjust the closure cost estimate and postclosure cost estimate for inflation and shall submit the following information to the department no later than August thirty-first of each year:

   a. Updated inflation adjusted closure cost estimate and postclosure cost estimate;

   b. A summary of financial assurance in place;

   c. The submittal date of the most recent detailed cost estimates for closure and postclosure;

d. The maximum allowed open area and quantities;

e. Current estimated open area and quantities; and

f. The mechanisms in use.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-05. Financial assurance for corrective action.

1. The department may require an owner or operator to undertake remedial measures, including corrective action, under the provisions of subsection 10 of North Dakota Century Code section 23.1-08-03 and chapter 61-28 when a release occurs.

2. An owner or operator required to undertake corrective action ~~must~~shall have a detailed estimate, in current dollars, of the cost of hiring a third party to perform the corrective action.

   a. The cost estimate must account for the total costs of corrective action for the entire corrective action period.

   b. The owner or operator ~~must~~shall annually adjust the cost estimate for inflation until corrective action is completed.

   c. The owner or operator shall increase the cost estimate if changes in corrective action or conditions increase the total costs. The owner or operator may reduce the cost estimate if the total costs exceed the maximum remaining costs of corrective action.

3. An owner or operator required to undertake corrective action shall establish financial assurance in accordance with section 33.1-20-14-07 no later than one hundred twenty days after the corrective action remedy has been selected. The owner or operator shall provide continuous coverage for corrective action until demonstrating compliance with article 33.1-16.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-14-07. Specific requirements of mechanisms for financial assurance.

1. **Trust fund.** A trust fund must satisfy the requirements of this subsection.

   a. The trustee ~~must~~shall be an entity which has authority to act as a trustee in this state and whose trust operations are regulated and examined by a federal or state agency.

   b. Payments into the trust fund must be made annually over the initial permit or over the remaining life of the solid waste management unit or facility, whichever is shorter. This is the pay-in period. If a permit is transferred and the new owner establishes a trust fund to meet the financial assurance requirements of this chapter, the new owner or operator shall provide payment into the trust fund equivalent to the total amount in the trust fund paid by the previous permittee.

   c. The first payment into the trust fund must equal or exceed the current cost estimate for closure or postclosure, whichever is applicable, divided by the number of years defined in subdivision b. The amount of subsequent payments must be determined by the following formula:

$$\text{Next payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

~~Where~~ CE is the current cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

d. The initial payment into the trust fund must be made for new or expanded facilities before the initial receipt of solid waste or for existing facilities before the effective date as provided by subsection 1 of section 33.1-20-14-01.

e. If an owner or operator establishes a trust fund after having used one or more alternative mechanisms specified in section 33.1-20-14-03, the initial payment into the trust fund must equal or exceed the amount that the fund would contain if the fund ~~were~~was established initially and annual payments made according to subdivision c.

f. The owner or operator, or other person authorized to conduct closure or postclosure care may request reimbursement from the trustee for these expenses. Requests for reimbursement will be approved by the trustee only if sufficient funds are remaining in the trust fund.

2. **Surety bond.** A surety bond guaranteeing payment or performance must satisfy ~~to~~ the requirements of this subsection.

a. The penal sum of the bond must be in an amount equal to or greater than the current closure or postclosure cost estimate, whichever is applicable. The surety company issuing the bond, at a minimum, must be among those acceptable sureties on federal bonds in Circular 570 of the United States department of treasury and be authorized to do business within this state.

b. Under the terms of the bond, the surety ~~must~~shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

c. The owner or operator ~~must~~shall establish a standby trust fund that meets the requirement of subsection 1, except for payment provisions in subdivisions b, c, and d.

d. Payments made under the terms of the bond must be deposited by the surety into the standby trust fund. Payments from the trust fund must be approved by the trustee.

e. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department one hundred twenty days or more in advance of the cancellation. If the surety cancels the bond, the owner or operator ~~must~~shall obtain alternate financial assurance.

3. **Letter of credit.** A letter of credit must satisfy the requirements of this subsection.

a. The issuing institution of a letter of credit must have authority to issue letters of credit in this state and its operations must be regulated and examined by a federal or state agency.

b. A letter from the owner or operator, referring to the letter of credit by number, issuing institution, and date and including the name and address of the solid waste management

unit or facility and the amount of funds assured, must be provided with the letter of credit to the department.

c. The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure or postclosure care, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation to the owner or operator and to the department one hundred twenty days or more in advance of the cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator ~~must~~shall obtain alternate financial assurance.

d. The owner or operator shall establish a standby trust fund that meets the requirement of subsection 1, except for payment provisions in subdivisions b, c, and d of subsection 1.

4. **Insurance.** Insurance must satisfy the requirements of this subsection.

a. The insurer must be licensed to transact the business of insurance in this state, or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

b. The insurance policy must guarantee that funds will be available to close the solid waste management unit or facility whenever closure occurs or to provide postclosure care whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that, once closure or postclosure care begins, the insurer ~~will~~shall be responsible for paying out funds up to an amount equal to the face amount of the policy upon the direction of the department to such party or parties as the department specifies.

c. The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or postclosure care, whichever is applicable. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer ~~will~~must not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. Each insurance policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer.

e. The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay a premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department one hundred twenty days or more in advance of cancellation. If the insurer cancels the policy, the owner or operator ~~must~~shall obtain alternate financial assurance.

Cancellation, termination, or failure to renew may not occur; however, during the one hundred twenty days beginning with the date of receipt of a notice by the department and the owner or operator as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that on or before the date of expiration:

(1) The department deems the facility abandoned;

(2) The permit is terminated or revoked, or a new permit is denied;

(3) Closure is ordered by the department or a state court or other court of competent jurisdiction;

(4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under United States Code title 11 (bankruptcy); or

(5) The premium due is paid.

f. After beginning partial or final closure or during the postclosure period, or both, an owner or operator or any other person authorized to perform closure or postclosure may request reimbursement for closure or postclosure expenditures by submitting itemized bills to the department. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum cost of closing the facility over its remaining operating life. After receiving bills for closure or postclosure activities, the department shall determine whether the expenditures are in accordance with the partial or final closure or postclosure plan or otherwise justified and if so, the department shall instruct the insurer to make reimbursement in such amounts as the department specifies in writing. If the department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, the department may withhold reimbursement of such amounts as the department deems prudent until the department determines, in accordance with section 33.1-20-14-08, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the department does not instruct the insurer to make such reimbursement, the department will provide the owner or operator with a detailed written statement of reasons.

5. **Financial test and corporate guarantee.** A financial test or corporate guarantee must satisfy the requirements of this subsection.

a. For the financial test, the owner or operator must have:

(1) A ratio of current assets to current liabilities greater than one and five-tenths, or a current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; ~~and~~

(2) Net working capital and tangible net worth each at least four times the sum of the current cost estimates for closure or postclosure, whichever is applicable; ~~and~~

(3) Tangible net worth of at least two million dollars; and

(4) Assets located in the United States amounting to at least four times the current cost estimates for closure or postclosure care, whichever is applicable.

b. To demonstrate the financial test, the owner or operator ~~must~~shall submit the following items to the department in a letter which transmits:

(1) A copy of an independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest fiscal year; and

(2) A report from an independent certified public accountant to the owner or operator stating that:

(a) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, yearend financial statements for the latest fiscal year; and

(b) In connection with that procedure, no matters came to lead the accountant to believe that specified data should be adjusted.

c. After initial submission of the items in subdivision b, the owner or operator ~~must~~shall send updated information to the department no later than August thirty-first of each succeeding fiscal year. This information must consist of all items specified in subdivision b.

d. If the owner or operator no longer meets the requirements of subdivision a, the owner or operator ~~must~~shall send notice by certified mail to the department within ninety days and establish alternate financial assurance within one hundred twenty days.

e. The department may disallow use of the financial test on the basis of qualification in the opinion expressed by the certified public accountant in the accountant's report on examination of owner's or operator's statements. An adverse opinion or a disclaimer of opinion may be cause for disallowance. The owner or operator shall provide alternate financial assurance within thirty days after notification of the disallowance.

f. An owner or operator may meet the requirements of this subsection by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor ~~must~~shall meet the requirements of subdivisions a through e and a certified copy of the guarantee must accompany the items in subdivision b. The terms of the guarantee must provide that:

(1) Guarantor ~~will~~shall complete closure or postclosure care, whichever is applicable, if the owner or operator fails to do so; and

(2) The corporate guarantee ~~will~~must remain in effect unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department; and

(3) Guarantor ~~will~~shall provide alternate financial assurance within ninety days if the corporate guarantee is canceled and if the owner or operator fails to provide approved alternate financial assurance.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-15

33.1-20-15-01. Application processing fee.

1. Applicants for permits for transporting solid waste and for solid waste management units shall pay, at the time the permit application is filed, ~~an~~a nonrefundable application processing fee as follows:

   a. Two hundred dollars for a solid waste transporter.

      (1) Solid waste transporter permits are effective for up to five years, expiring on ~~June thirtieth~~December thirty-first of the fifth year.

      (2) Each solid waste transport vehicle must display decals issued by the department that show the solid waste transporter permit number and permit expiration date.

      (3) The application processing fee ~~must include~~includes decals for one solid waste transport vehicle.

      (4) Decals for additional solid waste transport vehicles covered by the permit are available for purchase at the time of application or any later time during the permit period for a fee of twenty-five dollars per vehicle.

      (5) Additional decals may be purchased only for vehicles directly owned or operated by the permittee. Additional decals may not be purchased for vehicles owned or operated by a subcontractor working for the permittee. A solid waste transportation subcontractor shall apply for and obtain an individual solid waste transporter permit.

      (6) New vehicle decals are required after a permit expires regardless of when the decal was purchased during the permit period.

   b. Five thousand dollars for any resource recovery system unit.

   c. One thousand dollars for any municipal waste landfill unit that receives on average less than twenty tons [18.2 metric tons] per day.

   d. Three thousand dollars for any municipal waste landfill unit that receives on average from twenty tons [18.2 metric tons] per day to fifty tons [45.4 metric tons] per day.

   e. Five thousand dollars for any municipal waste landfill unit that receives on average more than fifty tons [45.4 metric tons] per day to five hundred tons [453.5 metric tons] per day.

   f. Twenty thousand dollars for any municipal waste landfill unit that receives on average more than five hundred tons [453.5 metric tons] per day.

   g. Three thousand dollars for any surface impoundment unit. A surface impoundment receiving an average of more than ten tons [9.1 metric tons] of waste per day and which will be closed with the waste materials remaining in place ~~shall~~must pay applicable fees for the appropriate size of industrial waste or special waste landfill unit.

   h. One thousand dollars for any industrial waste or special waste landfill unit that receives on average ten tons [9.1 metric tons] per day or less.

   i. Ten thousand dollars for any industrial waste or special waste unit that receives on average more than ten tons [9.1 metric tons] but less than one hundred tons [90.7 metric tons] per day.

j. Twenty thousand dollars for any industrial waste or special waste unit that receives on average one hundred tons [90.7 metric tons] or more per day.

k. Two thousand dollars for any inert waste landfill unit that receives on average more than forty tons [~~18.1~~36.3 metric tons] per day.

2. Modifications of existing unexpired permits which are initiated by the department may ~~not~~ require ~~an~~a nonrefundable application processing fee. Modifications of existing unexpired permits not initiated by the department that require major review ~~may be required to submit~~require a nonrefundable processing fee with the modification request.

3. Permit transfers.

a. Applicants for the transfer of permits for transporting solid waste shall pay, at the time the permit transfer application is filed, a nonrefundable application processing fee equivalent to the fee for a new permit. Decals for individual solid waste transport vehicles covered under the permit remain valid until the permit expiration date.

b. Applicants for the transfer of permits for solid waste management facilities shall pay, at the time the permit transfer application is filed, a nonrefundable application processing fee for all solid waste management units at the facility as follows:

(1) Five hundred dollars for each of the following units:

(a) Resource recovery system unit;

(b) Municipal waste landfill unit that receives on average five hundred tons [453.5 metric tons] or less per day;

(c) Surface impoundment unit;

(d) Industrial waste or special waste unit that receives on average ten tons [9.1 metric tons] or less per day; and

(e) Inert waste landfill unit that receives on average more than forty tons [36.3 metric tons] per day.

(2) Two thousand dollars for each of the following units:

(a) Municipal waste landfill unit that receives on average more than five hundred tons [453.5 metric tons] per day; and

(b) Industrial waste or special waste unit that receives on average more than ten tons [9.1 metric tons] per day.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03, 23.1-08-10; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-10; S.L. 2017, ch. 199, § 23

CHAPTER 33.1-20-16

33.1-20-16-01. Responsibility.

1. Permittees of all municipal waste landfills, municipal waste incinerators, municipal solid waste ash landfills, and special waste landfills which accept primarily oilfield special waste or TENORM waste in North Dakota ~~are required to~~must have at least one certified operator onsite at all times during operation of the facility.

2. Permittees of all industrial waste landfills and special waste landfills which ~~accept primarily coal combustion residuals~~do not accept oilfield special waste or TENORM waste in North Dakota ~~are required to~~must have at least one certified operator whose primary work location is at the facility.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-15; S.L. 2017, ch. 199, § 23

33.1-20-16-02. Certification and application.

1. In order to be certified landfill operator, an applicant ~~must~~shall take and pass a written examination given by the department or its authorized representative.

2. The department shall charge certification fees of ~~twenty-five~~fifty dollars for initial certification and ~~fifteen~~twenty-five dollars for annual renewal.

3. An individual desiring to attend the training session and take the certification examination shall file and submit the fee and application form at least thirty days before the scheduled training and certification session.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-15; S.L. 2017, ch. 199, § 23

33.1-20-16-03. Training course and certification requirements.

1. To be eligible for certification, a landfill or incinerator operator ~~must~~shall have a minimum of one year experience in operating the type of landfill or incinerator that the operator wants to be certified for and attend a training session approved by the department for solid waste facilities.

2. Training sessions ~~will~~must be held at least annually by the department to provide information on landfill and incinerator operation and maintenance.

3. An applicant may submit documentation to demonstrate the equivalency of other training courses and certification successfully completed. The applicant may be eligible for certification without taking the training course or written examination if the department finds that the training and certification are substantially equivalent.

4. Applicants who fail an examination may reapply to the department.

5. Upon passage of the examination with a score of seventy percent or better, the department will issue a certificate to the applicant.

6. The certificates of personnel who terminate their employment at a landfill or incinerator facility will remain valid until expiration.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-15; S.L. 2017, ch. 199, § 23

33.1-20-16-05. Term and renewal of certificates.

Certificates expire each year on June thirtieth. The holder ~~must~~shall reapply for renewal of an expired certificate and pay the renewal fee by July first. To be eligible for renewal, each certified operator ~~must~~shall attend at least one departmentally approved training course every three years.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-15; S.L. 2017, ch. 199, § 23

TITLE 66

PSYCHOLOGIST EXAMINERS, BOARD OF

OCTOBER 2024

CHAPTER 66-02-01

66-02-01-03. Licensing of psychologists and industrial-organizational psychologists from other jurisdictions - Expedited licensing.

1. Licensing of psychologists and industrial-organizational psychologists who are licensed by other jurisdictions must follow the procedures described in North Dakota Century Code sections 43-32-19.1 and 43-51-06 and one of the following requirements:

   a. Expedited licensing. A license may be granted to an individual licensed in good standing in another jurisdiction if the board concludes it received verified documentation of:

      (1) Graduation from an accredited program in the degree level of licensure sought in North Dakota;

      (2) Previously passed any national examination required by North Dakota;

      (3) Documentation of all professional licensures held at any time in any field and current status of those licenses, including an explanation and documentation related to all disciplinary history; and

      (4) Provide endorsements of application from behavioral health professionals that possess a current license, certification, registration, or other written authorization to practice from a state or provincial regulatory body, as approved by the board.

   b. A license may be granted to an individual who holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.

   c. A license may be granted to an individual who meets the requirements of any interstate compact agreement adopted by the state of North Dakota on the practice of psychologists or industrial-organizational psychologists.

2. An applicant for licensure pursuant to North Dakota Century Code chapters 43-32 and 43-51 ~~must~~shall pass the North Dakota oral examination or, once developed, the North Dakota professional responsibility examination as determined by the board. An applicant who has been licensed and in good standing in North Dakota whose license is expired more than one year may be granted a license renewal if:

   a. The applicant's current continuing education requirements are met;

   b. The annual renewal and late renewal application fees are paid;

c. Licensure in all other jurisdictions is in good standing and without any pending disciplinary matters in any jurisdiction; and

d. The applicant has passed the oral examination or, once developed, the North Dakota professional responsibility examination, if required by the board as a condition of license renewal.

3. Upon the board's receipt of a completed application initiation form from an individual licensed in another jurisdiction, the board may grant a provisional license that is valid for six months from date of initial application if the applicant is currently in good standing with no disciplinary actions in the previous five years. Upon a showing of good cause, the board may grant extensions of provisional licenses for periods of up to six months. If an application for licensure is denied during the time an applicant holds a provisional license, the provisional license expires on the date of the denial of the application for licensure.

History: Amended effective September 1, 2000; April 1, 2007; October 1, 2011; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2020; October 1, 2024.
General Authority: NDCC 43-32-08
Law Implemented: NDCC 43-32-19.1, 43-51-06

ARTICLE 66-04
PREDOCTORAL PSYCHOLOGY INTERNSHIP PROGRAM

Chapter
66-04-01 Predoctoral Psychology Internship Program

CHAPTER 66-04-01
PREDOCTORAL PSYCHOLOGY INTERNSHIP PROGRAM

Section
66-04-01-01 Definitions
66-04-01-02 Application and Certification Requirements
66-04-01-03 Supervision Contract
66-04-01-04 Qualifications of Internship Supervisor
66-04-01-05 Supervision Requirements
66-04-01-06 Compensation
66-04-01-07 Restrictions to Supervision of Psychology Intern

66-04-01-01. Definitions.

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

1. "Applicant" means an individual seeking registration as a predoctoral psychology intern pursuant to this article.

2. "Board" means the North Dakota board of psychologist examiners.

3. "Internship program" means a predoctoral psychology internship program.

4. "Internship supervisor" or "supervisor" means a psychologist who supervises a psychology intern in an internship program pursuant to this article.

5. "Psychological services" means any observation, description, evaluation, interpretation or modification of human behavior based upon psychological principles, methods, or procedures for the purposes of preventing or eliminating symptomatic, maladaptive, or undesired behavior or to enhance interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, or mental health; any psychological testing, evaluation, or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, biofeedback, behavior analysis and therapy, clinical applications of hypnosis, or other therapeutic techniques based upon psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct, as well as the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, or consultation. The term applies whether the services were provided to individuals, families, groups, organizations, institutions, or the public.

6. "Psychologist" means an individual who is licensed by the board under North Dakota Century Code chapter 43-32.

7. "Psychology intern" or "intern" means an individual who is registered by the board and is actively engaged in supervised practice.

8. "Supervisory relationship" means the relationship between a supervisor and a psychology intern.

History: Effective October 1, 2024.
General Authority: NDCC 43-32-35
Law Implemented: NDCC 43-32-35

66-04-01-02. Application and certification requirements.

1. An individual who intends to participate in an internship program must be certified by the board as a predoctoral psychology intern by submitting the appropriate application to the board if the applicant wishes to obtain predoctoral supervised experience required pursuant to subsection 1 of section 66-02-01-11.1.

2. Unless otherwise approved by the board, an applicant shall provide the board with proof the applicant is currently enrolled to obtain a doctoral degree from a program which is accredited by the American psychological association, Canadian psychological association, or other accrediting body approved by the board under the requirements of subsection 1 of North Dakota Century Code section 43-32-20.

3. Certification as a psychology intern is effective for two years unless otherwise approved by the board.

History: Effective October 1, 2024.
General Authority: NDCC 43-32-35
Law Implemented: NDCC 43-32-35

66-04-01-03. Supervision contract.

Prior to the psychology intern's participation in an internship program, an internship supervisor shall provide the board with a copy of the written agreement between the internship supervisor and the internship program for each psychology intern for whom the supervisor intends to provide supervision. The agreement must include, without limitation:

1. An outline of the skill level of the psychology intern at the beginning of the supervised experience.

2. The goals of the supervised experience of the psychology intern.

3. A format and procedure for reporting the internship program the following information regarding the psychology intern:

   a. The intern's progress in building skills;

   b. The intern's progress toward meeting the goals specified in subsection 2; and

   c. Any areas requiring continued growth.

4. An acknowledgement that the written agreement must be in place for the psychology intern to:

   a. Have lawful and ethical access to patients and the protected health information of patients; and

   b. Use the intern's supervised experience to make progress toward a degree, certification, or license.

History: Effective October 1, 2024.
General Authority: NDCC 43-32-35
Law Implemented: NDCC 43-32-35

66-04-01-04. Qualifications of internship supervisor.

1. A psychologist who wishes to serve as an internship supervisor for a psychology intern must:

   a. Unless otherwise approved by the board, be licensed to practice psychology as the phrase practice of psychology is defined by subsection 6 of North Dakota Century Code section 43-32-01; and

   b. Except as otherwise approved by the board, have been licensed by the board to practice psychology for more than three years.

2. Any psychologist who wishes to serve as an internship supervisor shall complete training in clinical supervision prior to serving as a supervisor, including the completion of three hours of continuing education every two years regarding clinical supervision.

3. Prior to serving as a supervisor, any psychologist who wishes to serve as a supervisor shall provide the board with verified documentation of the following:

   a. Completion of training in clinical supervision; and

   b. Verification of the current status of any professional licenses held by the supervisor, including documentation and an explanation of any disciplinary action taken against any of the supervisor's professional licenses.

4. A psychologist wishing to serve as an internship supervisor who is currently licensed as a psychologist by the board is exempt from providing verification regarding the current standing of the supervisor's respective license if the supervisor's licensure was issued by the board.

History: Effective October 1, 2024.
General Authority: NDCC 43-32-35
Law Implemented: NDCC 43-32-35

66-04-01-05. Supervision requirements.

1. A psychology intern is subject to all relevant statutes and rules of the board.

2. If an internship supervisor delegates patient care responsibilities to a psychology intern, the supervisor is responsible for all psychological services provided by each intern. The primary responsibility for all psychological services rendered to each patient by an intern rests with the internship supervisor.

3. An internship supervisor shall keep records of all supervision. These records must detail any training supervision plans and cosupervision agreements, dates of supervision meetings, notes regarding specific patients, cases reviewed, and a description of the services provided by the psychology intern.

4. A supervisor shall meet individually with each psychology intern the supervisor supervises at least once per week for a minimum of two hours to discuss and critique the performance of the psychology intern.

5. The supervisor responsible for each patient's care shall maintain documentation in such patient's medical record to demonstrate what services were provided to each patient and that the services provided to the patient were performed under the supervision of the supervisor. The supervisor shall check and update each patient's medical record at least every two weeks and shall ensure all payment requirements have been satisfied.

6. A psychology intern shall provide services in a suitable professional setting over which the supervisor has organizational responsibility for assignment and management of the psychology intern's professional activities.

7. A supervisor shall make reasonable efforts to ensure the work of the psychology intern is conducted only for patients the psychology intern is competent to provide services and that such services are performed in compliance with the provisions of the North Dakota Century Code and these rules.

8. A supervisor has the responsibility to ensure each patient is clearly informed of the relationship between the supervisor and the psychology intern, and each other's professional and legal responsibilities for the psychological services rendered to the patient. All patients must be informed of the supervised nature of the services provided by the psychology intern, and the professional responsibility of the supervisor. In the case of an adult, any legally competent patients receiving psychological services from the psychology intern must be provided this information in the form of a written statement that must be explained and provided to each patient during the initial professional contact with the intern. For patients who lack competency because of disability or minority, the written statement must be provided to the legal guardian or representative of the patient.

9. The written statement provided to each patient must include the following:

   a. A brief description of the psychological services to be provided by the psychology intern and supervisor, a schedule of charges, and an indication that billing will be through the supervisor, agency, or institution under the supervisor's name;

   b. The name, license number, professional address and telephone number of the supervisor and psychology intern;

   c. A statement regarding the limits of confidentiality, including any mandatory reporting requirements as identified within North Dakota law;

   d. A statement regarding the parameters of the professional relationship between the supervisor and the between the supervisor, psychology intern, and patient;

   e. A statement regarding the availability of the supervisor to meet with the patient on request;

   f. A statement regarding the supervisor's periodic review of patient records and progress; and

   g. The statement must include the signatures of the supervisor, psychology intern, and the patient or legal guardian.

10. A supervisor shall prepare records that will enable the supervisor to:

   a. Effectively train and evaluate each psychology intern the supervisor supervises; and

   b. Accurately determine the number of hours of supervised experience obtained by each psychology intern the supervisor supervises.

11. A supervisor shall maintain all records relating to the supervision of a psychology intern, including, without limitation, any records of psychological services provided by the psychology intern to any patient. The supervisor shall retain these records for no less than five years after the last date of supervision. Upon request, such records must be made available to the board for inspection.

12. A supervisor shall notify the board within ten days after the supervision of a psychology intern is completed or terminated.

13. If a supervisory relationship is terminated due to the actions of a psychology intern which may have a direct bearing upon the psychology intern's ability to serve the public in the practice of psychology, the supervisor shall provide an explanation to the board detailing the reason for the termination of the supervisory relationship.

History: Effective October 1, 2024.
General Authority: NDCC 43-32-35
Law Implemented: NDCC 43-32-35

66-04-01-06. Compensation.

1. Except as otherwise provided in this section, a psychology intern may be paid a fixed wage on a periodic basis and may not be paid on a percentage of the fees received. An employment agreement between a supervisor and psychology intern which does not provide for the payment of a wage may be approved by the board if the board determines the agreement is in the best interest of the psychology intern.

2. A psychology intern may not receive fees for professional services except as the agent of the psychology intern's employing supervisor or agency.

3. Except as otherwise provided in this section, a supervisor may not accept compensation from a psychology intern for supervision. In extenuating circumstances, the board may approve the acceptance of such compensation by a supervisor. Any agreement concerning the compensation of a supervisor by a psychology intern for supervision must be approved by the board before it becomes effective.

4. A supervisor shall ensure that the emphasis of the supervised experience of a psychology intern whom the supervisor supervises is on the training of the psychology intern, rather than on the raising of revenue by the psychology intern.

5. Supervisors in private practice settings may charge for individual supervision only and shall limit their fee for an individual face-to-face supervision hour that does not exceed the supervisor's reasonable and standard hourly fee for professional services to a patient.

History: Effective October 1, 2024.
General Authority: NDCC 43-32-35
Law Implemented: NDCC 43-32-35

66-04-01-07. Restrictions to supervision of psychology intern.

1. A supervisor may not provide supervision of psychology services to a person who has administrative or funding authority over the supervisor.

2. A supervisor may not provide supervision to a person with whom the supervisor is associated in any business relationship except one where the psychologist or school psychologist is an employer of the psychology intern for the practice of psychology or school psychology.

3. A supervisor may not assume supervisory responsibility for psychological services the supervisor is not personally competent to perform and may not permit any intern to provide psychological services to any patient for which the supervisor is not personally competent to perform.

4. A supervisor may not supervise any person the supervisor knows is illegally providing psychological services to the public either within or outside the supervisory relationship.

5. A supervisor may not supervise a psychology intern if that supervision involves a potential conflict of interest, including, without limitation, supervision of a psychology intern:

   a. Who is a member of the supervisor's household;

   b. Who is related to the supervisor by blood, adoption or marriage, within the third degree of consanguinity or affinity;

   c. With whom the supervisor has had or is having an intimate relationship; or

   d. With whom the supervisor has a financial or business relationship, including, without limitation, an agreement concerning compensation of the supervisor by the psychology intern for supervision, unless the financial or business relationship is approved by the board.

6. A supervisor may not serve as a primary supervisor to more than four psychology interns at one time.

History: Effective October 1, 2024.
General Authority: NDCC 43-32-35
Law Implemented: NDCC 43-32-35

TITLE 67

PUBLIC INSTRUCTION, SUPERINTENDENT OF

OCTOBER 2024

CHAPTER 67-23-02
STATE FUNDING FOR SPECIAL EDUCATION

Section
67-23-02-01 Definition
67-23-02-02 ~~Costs~~State Funding for ~~Educating~~ Students With Disabilities or Students With a Significant Medical Condition
67-23-02-03 Conditions for Contracted Services for Students With Disabilities or Students With a Significant Medical Condition
67-23-02-03.1 Building Contracts for Students With Disabilities or Students With a Significant Medical Condition
67-23-02-04 Excess Costs Allowed Under School-Placed Contracts for Students With Disabilities or Students With a Significant Medical Condition Attending an In-State Private or Public School or an Out-of-State Public or Private School
67-23-02-05 ~~Paraeducators~~Additional Staff for Students With Disabilities or Students With a Significant Medical Condition
67-23-02-06 Special Education Boarding Care Placement and Reimbursement for Students With Disabilities or Students With a Significant Medical Condition
67-23-02-07 Costs Not Allowed Under School-Placed Contracts

67-23-02-01. Definition.

As used in this chapter, "contract for services" means a contract between the resident district and another school district or an organization outside the local education agency for services to a student with disabilities or a significant medical condition.

History: Effective February 1, 2000; amended effective October 1, 2024.
General Authority: NDCC ~~15-59-05~~15.1-32-04, 15.1-32-09, 28-32-02
Law Implemented: NDCC ~~15-59-05~~15.1-32-09, 15.1-32-14; 20 USC 1400-1419

67-23-02-02. ~~Costs~~State funding for ~~educating~~ students with disabilities or students with a significant medical condition.

The resident district must pay the cost of special education and related services required by law for the student with disabilities or the student with a significant medical condition.

History: Effective February 1, 2000; amended effective October 1, 2024.
General Authority: NDCC ~~15-59-05~~15.1-32-04, 15.1-32-09, 28-32-02
Law Implemented: NDCC ~~15-59, 15-59-05~~15.1-32-14; 20 USC 1400-1419

67-23-02-03. Conditions for contracted services for students with disabilities or a significant medical condition.

~~1.~~ A resident district may enter ~~into~~ a contract for services for students with disabilities or students with a significant medical condition if all of the following requirements are met:

~~a.~~1. The IEP or 504 team has developed an ~~IEP~~educational plan and determined that the least restrictive environment for the education of ~~the~~a student with disabilities or student with a significant medical condition is not available in the ~~neighborhood school of the~~ resident district.

~~b.~~2. Another setting is available for education in the least restrictive environment in another district or other setting in North Dakota or another state.

~~c.~~3. The ~~curriculum and~~ educational services provided in the least restrictive setting are approved by the ~~superintendent~~resident school district. The resident district ~~must notify~~, or the educating district in the event of open enrollment, has notified the superintendent ~~in writing and submit the proper forms. The forms must be complete and include the proper signatures. Sections g and j of the student's current IEP must also be submitted to the department with the contract~~of public instruction using the online application. The student's current educational plan must be submitted to the department with the contract if it is not in North Dakota's case management system.

~~d.~~4. The school district making the education placement is able to assure the superintendent that alternative public school placements in the state were investigated and that the alternate setting selected is accredited, nonprofit, and nonsectarian and has proper facilities and services for the education of the student. Assurance is made by completing the contract form with required signatures.

~~2. Each resident district of a student with disabilities must:~~

~~a. Participate in development of the IEP planning for the student;~~

~~b. Evaluate the alternate program as defined in subdivision b of subsection 1 annually and establish an appropriate program for the student with disabilities within the resident district system whenever feasible;~~

~~c. Maintain a case file, including a progress and periodic evaluations of the student with disabilities;~~

~~d. Provide transportation and boarding care for the student; and~~

~~e. Share educational records with other school districts or residential facilities that provide educational services for the student with disabilities.~~

~~3. The school or facility providing the education to a student with disabilities must:~~

~~a. Provide the education program as prescribed in the IEP developed by the multidisciplinary team including representation from the resident district;~~

~~b. Report to parents at the same frequency as progress reports are provided for students who are not disabled attending the school during the school year;~~

~~c. Report progress and summary evaluations to the resident district two times during the school year; and~~

~~d. Share educational records with school districts or other residential facilities that provide educational services for the student with disabilities.~~

~~4. A school district may not enter into a contract with any in-state public school, in-state or out-of-state private nonsectarian, nonprofit corporation, or out-of-state public school for the education of any student because of a disability, unless the services provided by the school and the contract have been approved in advance by the superintendent. In order for a resident district to recover appropriate funds, the proposed contract forms must be filed with the department twenty working days in advance of the effective date of a new or changed placement. Preapproval may be set aside based on a waiver from the department.~~

~~5. A waiver request form, with reason for the waiver and projected submission date, is available from the department.~~

~~6. The administrator of the resident district of the student with disabilities must complete a contract for services using forms provided by the department to the administrator of the school providing the education to the student with disabilities.~~

~~7. The administrator of the school providing the education shall return the completed contract to the office of special education at the department.~~

~~8. The superintendent must notify each of the parties involved of approval or disapproval.~~

~~9. The resident district of the student with disabilities must make all payments to the school providing the education-related, including special education-related, service payments and boarding care payments, according to the period of time indicated in the contract.~~

~~10. The school providing the education for the student with disabilities shall arrange participation of the resident district in the IEP or other planning meetings and must maintain contact regarding the student's progress with the resident district and with the parents of the student with disabilities during the year.~~

~~11. The school providing the education for the student with disabilities shall keep and provide the resident district of the student with disabilities with attendance records for the student. In the event that the student attends the school operated by the school providing the education for a period less than a school year, the resident district of the student with disabilities will be liable for costs only for the period of time that the student was in attendance to the end of the month in which attendance ceases.~~

History: Effective February 1, 2000; amended effective October 1, 2024.
General Authority: NDCC ~~15-59-05~~15.1-29-14, 15.1-32-04, 15.1-32-09, 28-32-02
Law Implemented: NDCC ~~15-59-05, 15-59-06, 15-59-07~~15.1-29-14, 15.1-32-14, 15.1-32-15; 20 USC 1400-1419

67-23-02-03.1. Building contracts for students with disabilities or students with a significant medical condition.

1. A school district making the school placement of a student with disabilities or significant medical condition shall:

   a. Participate in development of the educational planning for the student;

   b. Evaluate the alternate program as defined in subdivision b of subsection 1 of 67-23-02-03 annually and establish an appropriate program for the student with disabilities within the resident district system whenever feasible;

   c. Maintain a case file, including progress and periodic evaluations of the student with disabilities;

   d. Provide transportation and when applicable boarding care for the student; and

e. Share educational records with other school districts or residential facilities that provide educational services.

2. The school or facility providing the education shall:

a. Provide the education program as prescribed in the educational plan developed by the IEP or 504 team including representation from the resident district;

b. Report to parents at the same frequency as progress reports are provided for students attending the school during the school year;

c. Report progress and summary evaluations to the resident district two times during the school year;

d. Share educational records with school districts or other residential facilities that provide educational services for the student; and

e. Bill only for direct services in the student's educational plan provided by special education and related services providers.

3. The educating district shall create an electronic contract with educational costs using the online application. Out-of-state contracts and costs may be created with the assistance of the superintendent of public instruction.

4. Submission of the contract is initiated by the educating district, followed by approval from the resident district and the superintendent of public instruction. Electronic mail must be generated with approval or rejection to the educating district, the resident district, and the superintendent of public instruction.

5. The resident district shall make all payments to the school providing the education-related service and boarding care, according to the period of service indicated in the contract.

6. The school providing the education shall invite the resident district to participate in the IEP or 504 or other planning meetings and shall maintain contact regarding the student's progress with the resident district and with the parents of the student during the year.

History: Effective October 1, 2024.
General Authority: NDCC 15.1-32-04, 15.1-32-09, 28-32-02
Law Implemented: NDCC 15.1-29-14, 15.1-32-14, 15.1-32-15, 15.1-32-16; 20 USC 1400-1419

67-23-02-04. ~~Costs~~Excess costs allowed under school-placed contracts for students with disabilities or students with a significant medical condition attending an in-state private or public school or an out-of-state public or private school.

1. ~~Costs~~Excess costs allowed under school-placed contracts for students with disabilities or students with a significant medical condition partially reimbursable from state special education funds include:

a. Boarding care costs, including:

(1) Room costs;

(2) Nursing service (unless billed directly to the student);

(3) Child care;

(4) Central services and supply;

(5) Dietary services;

(6) Plant operation;

(7) Building maintenance and grounds;

(8) Housekeeping;

(9) Laundry and linen;

(10) Depreciation; and

(11) Insurance.

b. Education, including~~:~~

~~(1) Salaries~~ salaries and employee benefits, which include teacher, ~~principal, and superintendent;~~coordinator, and instructional aide or general education paraprofessional

~~(2) Supplies; and~~

~~(3) Local school board costs~~.

c. Related services, including:

(1) Speech therapy;

(2) Physical therapy; ~~and~~

(3) Occupational therapy; and

(4) Any other service required to assist a child with a disability designed to meet their individual needs.

d. Administrative salaries and benefits for:

(1) Special education director;

(2) Special education assistant director; and

(3) Other special education central office staff.

History: Effective February 1, 2000; amended effective October 1, 2024.
General Authority: NDCC ~~15-59-05~~15.1-32-04, 15.1-32-09, 15.1-32-18, 28-32-02
Law Implemented: NDCC ~~15-59-05, 15-59-06, 15-59-07~~15.1-29-14, 15.1-32-14, 15.1-32-15, 15.1-32-19; 20 USC 1400-1419

67-23-02-05. ~~Paraeducators~~Additional staff for students with disabilities or a significant medical condition.

The full cost of a ~~one-on-one paraeducator or aide can~~paraprofessional, speech-language pathology paraprofessional, registered behavior technician, and special education may be claimed as an allowable cost under a school-placed contract ~~if the paraeducator is with the student with disabilities exclusively throughout a schoolday. If a paraeducator has other duties, then the percentage of time and cost on the contract needs to be adjusted accordingly. The requirements and standards for a paraeducator are specified in chapter 67-11-14~~as defined in the student's educational plan.

History: Effective February 1, 2000; amended effective October 1, 2024.
General Authority: NDCC ~~15-59-05~~15.1-32-04, 15.1-32-09, 28-32-02

Law Implemented: NDCC ~~15-59-05, 15-59-06, 15-59-07~~15.1-29-14, 15.1-32-14, 15.1-32-15; 20 USC 1400-1419

67-23-02-06. Special education boarding care placement and reimbursement for students with disabilities or students with a significant medical condition.

Educational boarding care placement for a student with disabilities or a student with a significant medical condition may be accomplished only through the recommendation of the IEP or 504 team ~~and in the circumstance when a student cannot be transported daily to and from the home due to distance traveled~~. Boarding care placement must be in a state-registered home or institution. ~~Boarding care for a child may occur in state but out of unit, within unit but out of district, or out of state.~~ Reimbursement is requested by the resident district through the local education agency for eighty percent of the cost of boarding care for the student. ~~The cost reimbursement may be applied for using a form available from the department.~~

History: Effective February 1, 2000; amended effective October 1, 2024.
General Authority: NDCC ~~15-59-05~~15.1-32-04, 15.1-32-09, 28-32-02
Law Implemented: NDCC ~~15-59-05, 15-59-07.2, 15-59.3-03~~15.1-29-14, 15.1-32-14, 15.1-32-15, 15.1-32-19; 20 USC 1400-1419

67-23-02-07. Costs not allowed under school-placed contracts.

Costs not allowed under contracts for school-placed ~~contracts for~~ students with disabilities or students with a significant medical condition are:

1. Medical services provided by a physician beyond diagnostic procedures;
2. Drugs and medication;
3. Incidental fees or personal equipment that are the responsibility of the parents of the students such as eyeglasses, a prosthesis, ~~textbook deposits~~entertainment, or driver's education fees; and
4. Staff expenses including staff:
   a. Travel; and
   b. Education and training~~;~~
   ~~c. Libraries; and~~
   ~~d. Audiovisual supplies~~.

History: Effective February 1, 2000; amended effective October 1, 2024.
General Authority: NDCC ~~15-59-05~~15.1-32-04, 15.1-32-09, 15.1-32-18, 28-32-02
Law Implemented: NDCC ~~15-59-02.1, 15-59-05, 15-59-06, 15-59-07~~15.1-29-14, 15.1-32-14, 15.1-32-15, 15.1-32-19; 20 USC 1400-1419

TITLE 74

SEED COMMISSION

OCTOBER 2024

CHAPTER 74-01-01

74-01-01-01. Organization of seed commission.

1. History. The state seed department was established by the 1931 legislative assembly. The main office was designated to be at North Dakota state university. Branch offices are maintained in Grafton to more efficiently serve the potato industry with official grade inspection services. The department is governed by the state seed commission.

2. Commission. The state seed commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the northern plains potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant, selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner or the commissioner's designee, who shall serve as chairman. The director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.

3. Functions. The seed department is designated as the official seed certification agency of the state. The seed department enforces state seed laws, inspects and analyzes seed offered for sale, provides a public laboratory service for examining and analyzing seed and commercially produced crops for planting and consumption purposes, maintains a seed certification system for field seeds and potatoes, inspects and grades potatoes and other produce, regulates wholesale potato dealers, and establishes grade standards and grades commodities not in the federal grain standards. Lists of field-inspected seeds published by the seed department, specifically bulletin nos. 92 and 95, are produced for the express purpose of informing producers of the availability of certified seed grown in North Dakota, and are not intended to induce reliance on the part of producers on the department's inspection, certifications, or any other act or undertaking relating to quantity or quality of the seed or crop produced, fitness, presence or absence of disease, or identity of variety or selection.

4. For the purposes of this section, North Dakota Century Code chapter 4.1-53 and North Dakota Administrative Code article 74-03 generally apply to the certification and conditioning of field seeds; North Dakota Century Code chapter 4.1-53 and North Dakota Administrative Code article 74-02 to the regulation of field crops and seeds; North Dakota Century Code chapter ~~4-10~~4.1-55 and North Dakota Administrative Code article 74-04 to the certification and inspection of potatoes; North Dakota Century Code chapter 4.1-57 and North Dakota

Administrative Code article 74-05 to the regulation of wholesale potato dealers; and North Dakota Century Code chapter 4.1-53 and North Dakota Administrative Code article 74-06 to the inspection and grading of crops not in federal grain standards.

5. Seed commissioner. The commission appoints the seed department manager, who is the state seed commissioner.

6. Inquiries. Inquiries regarding the seed department may be addressed to the commissioner:

   State Seed Commissioner
   State Seed Department
   1313 18th Street North
   Fargo, ND 58105

History: Amended effective December 1, 1981; November 1, 1985; October 1, 1989; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2024.
General Authority: NDCC 4.1-52-10, 28-32-02.1
Law Implemented: NDCC 4.1-52-07, 4.1-53-42, 4.1-53-59

74-02-01-03. Flower seed labeling requirements.

1. Labeling kind and variety or type and performance characteristics of flower seeds. The requirements of ~~subsection 2 of~~ North Dakota Century Code section ~~4-09-11.1~~4.1-53-29 specifying that flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations promulgated under North Dakota Century Code ~~chapter 4-09~~section 4.1-53-29 shall be met as follows:

   a. For the seeds of plants grown primarily for their blooms:

      (1) If the seeds are of a single named variety, the kind and variety shall be stated, for example, "marigold, butterball".

      (2) If the seeds are of a single type and color for which there is no specific variety name, the type of plant (if significant), and the type and color of bloom shall be indicated, for example, "scabiosa, tall, large, flowered, double, pink".

      (3) If the seeds consist of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant (if significant), and the type or types of bloom shall be indicated. In addition, it shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is "marigold, dwarf double French, mixed colors".

      (4) If the seeds consist of an assortment or mixture of kinds, it shall be clearly indicated that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated, for example, "cut flower mixture" or "rock garden mixture". Such statements as "wild flower mixture", "general purpose mixture", "wonder mixture", or any other statement which fails to indicate the specific use of the seed shall not be considered as meeting the requirements of this paragraph unless the specific use of the mixture is also stated.

   b. For seeds of plants grown for ornamental purposes other than their blooms, the kind and variety shall be stated, or the kind shall be stated together with a descriptive statement concerning the ornamental part of the plant, for example, "ornamental gourds, small fruited, mixed".

2. Kinds of flower seeds subject to germination labeling requirements and germination standards for flower seeds. The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination labeling provisions of ~~subsection 2 of~~ North Dakota Century Code section ~~4-09-11.1~~4.1-53-29. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, this percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

Kind	Percent
African daisy - dimorphotheca aurantiaca	55
Ageratum - ageratum mexicanum	60
Alyssum - alyssum compactum, alyssum maritimum, alyssum procumbens, alyssum saxatile	60
Anemone - anemone coronaria, anemone pulsatilla	55
Angel's trumpet - datura arborea	60

Arabis - arabis alpina 60
Aster, China - callistephus chinensis except pompon,
powderpuff, and princess types 55
Aster, China - callistephus chinensis, pompon,
powderpuff, and princess types 50
Aubrietia - aubrietia deltoides 45
Balsam - impatiens balsamina 70
Calendula - calendula officinalis 65
California poppy - eschscholtzia californica 60
Calliopsis - coreopsis bicolor, coreopsis drummondi,
coreopsis elegans 65
Campanula:
Canterbury bells - campanula medium 60
Cup and saucer bellflower - campanula medium
calycanthema 60
Carpathian bellflower - campanula carpatica 50
Peach bellflower - campanula persicifolia 50
Candytuft, annual - iberis amara, iberis umbellata.... 65
Candytuft, perennial - ibersis gibraltarica,
ibersis sempervirens 55
Castor bean - ricinus communis 60
Cathedral bells - cobaea scandens 65
Celosia - celosia argentea 65
Centaurea: basket flower - centaurea americana,
cornflower, centaurea cyanus,
Dusty miller - centaurea candidissima, royal
centaurea - centaurea imperialis
Sweet sultan - centaurea moschata,
velvet centaurea -
centaurea gymnocarpa 60
Chinese forget-me-not - cynoglossum amabile 55
Chrysanthemum, annual - chrysanthemum carinatum,
chrysanthemum coronarium, chrysanthemum segetum 40
Clarkia - clarkia elegans 65
Cleome - cleome gigantea 65
Columbine - aquilegia species 50
Coral bells - heuchera sanguinea 55
Coreopsis, perennial - coreopsis lanceolata 40
Cosmos: sensation, mammoth and crested types -
cosmos bipinnatus: Klondyke type - cosmos sulphureus 65
Dahlia - dahlis species 55
Delphinium, perennial: belladonna and bellamosum
types; cardinal larkspur - delphinium cardinale;
chinensis types; Pacific giant, gold medal and
other hybrids of delphinium elatum 55
Dianthus:
Carnation - dianthus caryophyllus 60
China pinks - dianthus chinensis, heddewigi,
heddensis 70
Grass pinks - dianthus plumarius 60
Maiden pinks - dianthus deltoides 60
Sweet william - dianthus barbatus 70
Sweet wivelsfield - dianthus allwoodi 60
Dracaena - dracaena indivisa 55
English daisy - bellis perennis 55

Foxglove - digitalis species 60
Gaillardia, annual - gaillardia pulchella, gaillardia picta; perennial - gaillardia grandiflora 45
Geum - geum species 55
Gilia - gilia species 65
Godetia - godetia amoena, godetia grandiflora 65
Gourds: yellow flowered - cucurbita pepo; white flowered - lagenaria sisceraria; dishcloth - luffa cylindrica 70
Gypsophila: annual baby's breath - gypsophila elegans; perennial baby's breath - gypsophila paniculata, gypsophila pacifica, gypsophila repens 70
Helichrysum - helichrysum monstosum 60
Hollyhock - althea rosea 65
Ipomoea: cypress vine - ipomoea quamoclit; moonflower - ipomoea noctiflora; morning glories, cardinal climber, hearts and honey vine - ipomoea species 75
Job's tears - coix lacrymajobi 70
Kochia - kochia childsi 55
Larkspur, annual - delphinium ajacis 60
Lantana - lantana camara, lantana hybrida 35
Linaria - linaria species 65
Lobelia, annual - lobelia erinus 65
Lunaria, annual - lunaria annua 65
Lupine - lupinus species 65
Marigold - tagetes species 65
Marvel of Peru - mirabilis jalapa 60
Migonette - reseda odorata 55
Myosotis - myosotis alpestris, myosotis oblongata, myosotis palustris 50
Nasturtium - tropaeolum species 60
Nemesia - nemesia species 65
Nemophila - nemophila insignis 70
Nicotiana - nicotiana affinis, nicotiana sanderae, nicotiana sylvestris 65
Nierembergia - nierembergia species 55
Nigella - nigella damascena 55
Pansy - viola tricolor 60
Penstemon - penstemon barbatus, penstemon grandiflorus, penstemon laevigatus, penstemon pupescens 60
Petunia - petunia species 45
Phacelia - phacelia campanularia, phacelia minor, phacelia tanacetifolia 65
Phlox, annual - phlox drummondi all types and varieties 55
Physalis - physalis species 60
Poppy: shirley poppy - papaver rhoeas; Iceland poppy - papaver nudicaule; oriental poppy - papaver orientalis; tulip poppy - papaver glaucum 60
Portulaca - portulaca grandiflora 55
Salpiglossis - salpiglossis gloxinaeflora, salpiglossis sinuata 60
Salvia - scarlet sage - salvia splendens; mealycup

sage (blue bedder) - salvia farinacea	50
Saponaria - saponaria ocymoides, saponaria vaccaria	60
Scabiosa, annual - scabiosa atropurpurea	50
Scabiosa, perennial - scabiosa caucasica	40
Schizanthus - schizanthus species	60
Shasta daisy - chrysanthemum maximum, chrysanthemum leucanthemum	65
Snapdragon - antirrhinum species	55
Solanum - solanum species	60
Stocks: common - mathiola incana; evening scented - mathiola bicornis	65
Sunflower - helianthus species	65
Sweet pea, annual and perennial other than dwarf bush - lathyrus odoratus, lathyrus latifolius	75
Sweet pea, dwarf bush - lathyrus odoratus	65
Thunbergia - thunbergia alata	60
Torch flower - tithonia speciosa	70
Tritoma - kniphofia species	65
Verbena, annual - verbena hybrida	35
Vinca - vinca rosea	60
Viola - viola cornuta	55
Wallflower - cheiranthus allioni	65
Zinnia (except linearis and creeping) - zinnia augustifolla, zinnia elegans, zinnia grandiflora, zinnia gracillima, zinnia haegeana, zinnia multiflora, zinnia pumila	65
Zinnia, linearis and creeping - zinnia linearis, sanvitalia procumbens	50

A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting twenty-five percent or more of the mixture by number is below standard for the kind or kinds involved.

History: Amended effective October 1, 2024.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-28, 4.1-53-29, 4.1-53-30

74-02-01-04. Sale and exchange of seed.

~~The definition of terms used in this section and in North Dakota Century Code section 4-09-15 shall be defined in this section and in North Dakota Century Code section 4-09-01.~~

The exemptions found in North Dakota Century Code sections 4.1-53-61 and 4.1-53-57 do not apply to a farmer who sells only the farmer's own seed which has been publicly advertised for sale. For the purposes of this section, "publicly advertised for sale" includes advertising in newspapers, periodicals, pamphlets, or posters, by radio or television, or in any other media. For the purposes of this section and North Dakota Century Code sections 4.1-53-61 and 4.1-53-57, "sells only the farmer's own seed" includes any disposition of seed or transaction whereby the farmer sells, exchanges, or trades the farmer's own seed. The exemptions found in North Dakota Century Code sections 4.1-53-61 and 4.1-53-57 also do not apply to any farmer who is engaged in the seed business. For the purposes of this section, "engaged in the seed business" includes the sale of any seed by a person which seed was not grown on that person's own farm, publicly advertising for sale any seed, or making use of any third party as an agent or broker to bring a buyer and seller of seed together for purposes of sale, exchange, or trade.

The exemptions found in North Dakota Century Code sections 4.1-53-61 and 4.1-53-57 do not apply to seed for which a certificate of plant variety protection has been applied for or issued, except regarding the replanting of seed on the farmer's own farm. In the absence of contractual obligations between the variety owner and a first purchaser, a farmer may replant seed varieties protected by plant variety protection for an indeterminate length of time provided the exemptions listed in North Dakota Century Code sections 4.1-53-61 and 4.1-53-57 are complied with in full.

History: Amended effective May 1, 1988; January 2, 2006; October 1, 2024.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-57(4), 4.1-53-61

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, payment of past-due accounts, and proof of seed eligibility, must be received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications for grass seed must be received by May first to avoid late penalty. ~~Applications for hemp must be received by June first to avoid late penalty.~~ Applications for millet and buckwheat must be received by July fifteenth to avoid late penalty. Applications for soybeans requiring only a single inspection (preharvest) must be received by August first to avoid late penalty. In case of an emergency or unusual circumstances due to weather or crop conditions, the deadline may be extended at the discretion of the seed commissioner. In such an event, late application penalties may be waived.

2. Information required on application. The application shall be completed by the applicant and returned to the seed department. All questions must be answered completely and correctly. The location of the farm and field, including the legal description, shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. Farm service agency field maps or equivalent must be provided by the applicant. If the seed is the grower's own seed, sufficient evidence must be provided to the department to verify eligibility. If the seed is purchased, an official certified seed tag or bulk certificates must accompany the application.

3. Roguing and spraying fields. Roguing is essential to maintain the purity of varieties and high standards of certified seed. Roguing fields prior to inspection is recommended to remove undesirable plants from fields. Plants that should be removed include off-type plants, other crop plants, prohibited and restricted noxious weeds, and other impurities which may be growing in the field.

   Roguing is usually done by pulling off-types or other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, fertile off-types and undesirable plants should be removed before pollen is shed. Sterile off-types may be removed any time prior to the final inspection.

   Whenever practical and advisable, seed fields should be sprayed with pesticides according to the manufacturer's label to control pests. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. Weeds and diseases.

   a. Prohibited noxious weeds under North Dakota seed laws and rules are leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, hoary cress (perennial peppergrass), absinth wormwood, musk thistle, spotted knapweed, yellow starthistle, and Palmer amaranth.

   b. Restricted noxious weeds under North Dakota seed laws and rules are dodder species, hedge bindweed (wild morning glory), wild oats, and quackgrass.

   c. A field may be rejected if it is the field inspector's opinion that the amount and kind of weeds present make it difficult to conduct the inspection, or the field condition is such that the quality of the cleaned seed may be questionable.

d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.

e. Diseases not governed by specific crop standards may be cause for rejection if it is the field inspector's opinion that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. Cancellation of field inspection. An application may be canceled by the applicant before the field inspection is completed. The application fee minus an administrative fee will be refunded to the applicant. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection has occurred. Refunds will not be made after the field is inspected or because the field has been rejected.

6. Appeal. Reinspection of rejected fields may be considered, provided the application for appeal allows a reasonable amount of time for reinspection prior to harvest. A fee for reinspection may be assessed.

7. The variety name stated on the application will be standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the applicant will be presumed correct if the documentation provided is valid.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2018; July 1, 2020; July 1, 2022; October 1, 2024.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-37, 4.1-53-42, 4.1-53-59

74-03-01-12. Labeling.

All classes of certified seed, when offered for sale, shall have an official certification label affixed to each container clearly identifying the certification agency, the lot number or other identification, variety name and kind, and class of seed. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.

1. Records. Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled. All records pertaining to the lot involved must be accessible for inspection by the commissioner at any time during customary business hours. Records shall include:

   a. Quantity of seed grown and conditioned or purchased for bulk sale.

   b. Quantity of bulk certified seed sold by variety and lot number.

   c. A current inventory of each variety of seed available for sale.

   d. Consult Federal Seed Act regulations part 201 for recordkeeping requirements for seed in interstate commerce.

2. Samples. It is the ~~initial~~ labeler's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by kind, variety, class, and lot number of each lot of certified seed sold, whether bagged or in bulk, for a period of one year after the final disposition of the seed lot.

3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law, and any such disclaimer of vendor's express or implied warranty is invalid.

4. Bagged seed.

   a. All bagged seed represented or sold as foundation, registered, or certified must be bagged in new bags and the official certification tag properly affixed on the bag. Certification tags are void if improperly used or not attached to the bag. Containers or tote bags larger than one hundred sixty pounds [72.77 kilograms] may be considered bulk seed.

   b. The use of two tags, the official certification tag and a separate analysis tag, on foundation, registered, or certified seed is optional.

   c. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.

   d. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.

5. Bulk seed. In the case of seed sold in bulk, the bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.

   a. Foundation and registered class seed may be sold in bulk only by the applicant producer, or by an approved conditioner.

   b. Certified class seed may be sold in bulk by the applicant producer, an approved conditioner, or an approved bulk retail facility.

   c. Approved bulk retail facilities may be allowed to handle bulk registered seed on a case-by-case basis only when authorized by the state seed department. If authorized by the seed department, the bulk retailer must designate which bins will be used for registered seed.

   d. Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning facility or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.

   e. Offsite bins or satellite bin locations shall be managed in the same manner as those at an approved facility. Bins shall be listed on a separate bin list registered under the name of an approved facility. All satellite locations shall be inspected annually by the seed department.

   f. Handling bulk certified seed:

      (1) A separate storage bin must be available for each lot that will be sold in bulk. Each bin shall be considered a separate lot of seed and shall be labeled accordingly.

      (2) All bins, augers, converyors, and other equipment must be cleaned before storage or handling certified seed.

      (3) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.

      (4) All augers used to convey seed must be reversible.

(5) All bins must be clearly and prominently marked to show kind, variety, class, and lot number.

(6) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin, or to allow for aeration.

g. A maximum of two physical transfers are permitted after final certification.

h. It is the seller's responsibility to:

(1) Handle seed in a manner to prevent mixtures and contamination.

(2) Supply seed that is representative of the seed tested and approved for certification.

(3) Ensure all bins, augers, conveyors, and other equipment are adequately cleaned before handling certified seed.

(4) Determine that the vehicle receiving bulk certified seed has been cleaned prior to receiving the seed. If it is not clean, this is to be noted on the bill of sale or transfer certificate.

(5) Provide to the purchaser a bulk certificate for each load of bulk certified seed at the time of delivery.

(6) Ensure that the conditioned lot is not moved from the premises of the approved conditioning facility or labeler's facility until the sample has been tested by the state seed department laboratory and shows that the lot is eligible for certification.

i. It is the buyer's responsibility to:

(1) Obtain a bulk certificate from the seller for each load of bulk certified seed at the time of delivery.

(2) Provide a clean vehicle or container in which to load seed.

(3) Maintain purity of the seed after it has been loaded into the buyer's vehicle.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2020; October 1, 2024.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-53-12, 4.1-53-13, 4.1-53-39

CHAPTER 74-03-12.1

74-03-12.1-01. Land requirements.

A crop of field peas will not be considered for certification if planted on land which produced the same kind the previous year unless the previous crop was the same variety and was inspected for certification. A crop will not be considered eligible for certification if planted on land which produced dry field bean, green bean, ~~soybean,~~ or chickpeas the preceding year.

History: Effective July 1, 2010; amended effective October 1, 2024.
General Authority: NDCC 4.1-52-10
Law Implemented: NDCC 4.1-52-10, 4.1-53-42

74-04-01-04. Application fees and restrictions.

1. Application for field inspection must be received in the state seed department, 1313 18th Street North, P.O. Box 5257, Fargo, North Dakota, not later than June fifteenth. There is a ~~three~~five dollar per acre [.40 hectare] cash penalty for later applications.

2. At least one-half the fees and all due accounts must accompany the applications.

3. Applications are subject to cancellation in the case of crop failure or other valid reason and the application fee, minus a cancellation fee will be returned if the request reaches the state seed department before the inspector arrives in the general locality of the field. However, in such a case, the crop must be plowed under or destroyed so as not to create a disease hazard.

4. Separate application forms are required for latent virus testing.

5. Loss by drown outs, if over twenty-five percent of the field, will be allowed after the first inspection only. No adjustments will be made thereafter.

6. Fee schedules for field inspection, grade inspection, latent virus testing, cancellation fees, and late penalties are subject to change and available at the state seed department.

7. Prompt payment of all fees will be required at all times.

8. Additional testing costs such as laboratory tests will be assessed at costs to the grower.

History: Amended effective December 1, 1981; December 1, 1987; June 1, 1992; September 1, 1997; September 1, 2002; July 1, 2018; July 1, 2020; October 1, 2024.
General Authority: NDCC 28-32
Law Implemented: NDCC 4.1-55-02

74-04-01-05. Seed potato farm requirements.

1. All potato fields on the farm or in the farming operation must be eligible and entered for certification. A farming operation means any combination of operators in a farm partnership, and all potato fields in the farming operation whether actually grown by the applicant or under growing agreements, with separate equipment and storages being the primary consideration to the seed department in determining the eligibility of applicants as seed farms. Separate legal entities, if determined by the seed commissioner to be associated or affiliated with a commercial potato farming operation, are not eligible for entry into the certification program.

2. All equipment and storages in the potato operation must be used only on the acreage [hectarage] entered for certification.

3. Parts of fields will not be accepted or certified without the prior approval of the commissioner.

4. Boundaries of certified seed potato fields must be clearly defined. Adequate separation from uncertified fields must be maintained and are the responsibility of the certified seed potato grower. The definition of adequate separation is at the discretion of the state seed department or its representative. Field separation of a certified field from an uncertified field must be established prior to the second inspection.

5. Seed potatoes will not be planted on ground that was cropped to potatoes the previous year, unless the ground is fumigated.

6. Strips or markers are required between seed lots and varieties.

7. Equipment and storages must be thoroughly cleaned and disinfected at least once annually.

8. All cull piles in the farming operation must be properly destroyed.

9. The adequacy of seed farms in meeting all criteria for eligibility is determined by onsite inspection by and at the discretion of seed department personnel.

History: Amended effective December 1, 1981; June 1, 1992; September 1, 1997; September 1, 2002; January 2, 2006; October 1, 2024.
General Authority: NDCC 28-32
Law Implemented: NDCC 4.1-55-02

74-04-01-07. Seed classification and limited generation.

1. All seed potatoes must be limited to seven years of reproduction in the field. Seed lots may be reproduced beyond this limit with prior approval of the state seed department providing the seed lot has been winter tested and eligible for recertification.

2. Prenuclear seed stocks must originate from tissue-culture derived plantlets, minitubers, microtubers, or pathogen-tested stem cuttings. Experimental breeding selections shall originate from pathogen-tested material. The first year of reproduction of these stocks will be regarded as nuclear seed stock. The certified designation will be granted to lots meeting the minimum standards outlined in section 74-04-01-08 and by approval of the commissioner. Subsequent generations will be regarded as:

   a. FY1 ~~(~~(first field year) is the progeny of nuclear seed.

   b. FY2 (second field year) is the progeny of FY1.

   c. FY3 (third field year) is the progeny of FY2.

   d. ~~FY 4~~FY4 (fourth field year) is the progeny of FY3.

   e. FY5 (fifth field year) is the progeny of ~~FY 4~~FY4.

   f. FY6 (sixth field year) is the progeny of FY5.

   g. Certified class (seventh field year) is the progeny of FY6.

3. Prenuclear seed stocks intended to be grown in the greenhouse as minitubers, microtubers, or stem cuttings must be laboratory-tested, be demonstrated to be free of the following pathogens, and meet the following standards:

   a. Clavibacter michiganensis subsp. sepedonicus (ring rot).

   b. Erwinia carotovora (blackleg and soft rot).

   c. Potato virus A.

   d. Potato virus M.

   e. Potato virus X.

   f. Potato virus Y.

   g. Potato leafroll virus.

   h. Potato spindle tuber viroid.

i. Potato mop top virus.

j. All micropropagation production must be approved by a certification agency.

k. Good records must be maintained on all tests and submitted with the application for field inspection.

l. A minimum of one percent of the plantlets must have been tested for the above pathogens using the most reliable testing techniques.

4. Basic seed must originate from sources described above and developed in seed plots and have met specific field inspection and winter test standards established by the state seed department. Seed stocks will be grown a limited number of field years.

   Experimental cultivars under evaluation by the state seed department in cooperation with universities or industry will meet program requirements of and will be maintained under guidelines and standards established by the state seed department. Seed stocks will be grown a limited number of field years.

5. Foundation class seed must be seed meeting standards for recertification.

   a. Foundation seed will be produced on farms found to be free of bacterial ring rot for three years. All seed stocks must be replaced on a farm in which bacterial ring rot has been found.

   b. Excessive blackleg symptoms will be cause for rejection as foundation stock.

6. The certified class must meet the minimum field tolerances described in section 74-04-01-08. The classification serves as a quality standard for commercial planting purposes only and must meet all the requirements and responsibilities of this chapter. The certified class designation may be applied to any field year under the criteria set forth in section 74-04-01-07.8.

7. Field year designations increase with years of field reproduction from the original seed source. Field year ~~six (FY6)~~ five (FY5) will be the final generation of seed eligible for recertification. The certified seed class is not eligible for recertification. If seed availability is low for a specific potato variety, seed lots with more advanced generation numbers may be eligible for recertification providing the seed lot has passed a winter test and prior approval of the state seed department has been obtained.

8. Except for varietal mixtures, seed lots may be downgraded and placed in the certified class and sold by their field year designation as certified seed providing they meet the specifications for that class. Disease tolerances for each field year of seed are outlined in the section on field inspection standards.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 1, 2005; January 2, 2006; July 1, 2010; July 1, 2020; October 1, 2024.
General Authority: NDCC 28-32
Law Implemented: NDCC 4.1-55-02

74-04-01-08. Field inspection standards.

1. Each seed potato field will be visually inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected. For varieties that do

not express readily visible symptoms of a disease, laboratory testing may be done for the pathogen.

2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visually may be present.

	First Inspection Tolerances (%) Foundation Class Field Year						Certified Class Field Year
	1	2	3	4	5	6	0-6
Varietal mixture	0.1	0.2	0.3	0.5	0.5	0.5	0.5
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.2	0.3	0.4	0.5	0.5	0.5	~~1.0~~2.0
Leaf roll (PLRV)	0.2	0.3	0.4	0.5	0.5	0.5	~~1.0~~2.0
Total serious virus	0.2	0.3	0.4	0.5	0.5	0.5	~~1.0~~2.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

	Second and All Subsequent Inspections Tolerances (%) Foundation Class Field Year						Certified Class Field Year
	1	2	3	4	5	6	0-6
Varietal mixture	0.1	0.1	0.2	0.3	0.3	0.3	0.3
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.0	0.1	0.2	0.3	0.3	0.3	~~1.0~~2.0
Leaf roll (PLRV)	0.0	0.1	0.2	0.3	0.3	0.3	~~1.0~~2.0
Total serious virus	0.0	0.1	0.2	0.3	0.3	0.3	~~1.0~~2.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Late blight found during field inspection must be confirmed by symptoms or laboratory diagnosis before being reported on the inspection report.

* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease-causing agents, but that none was found during inspection.

Varieties that do not express visible disease symptoms. Potato varieties that do not express visible disease symptoms of a specific pathogen may be subjected to a laboratory test to determine the levels of the pathogen in a seed lot. This testing may occur during the growing season or during the winter test, or both, and may affect eligibility of the seed lot.

Ring rot. Seed fields will be subject to a third (final) field inspection focused primarily on inspection for symptoms related to ring rot. If the field has not received a third inspection, the grower will be required to submit a four hundred tuber sample (minimum) per field for laboratory testing.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed during the first and second inspection, and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded on the first and second inspection, and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths, or other such injurious pests that have never been found and confirmed in North Dakota seed potato fields.

Tolerances for potato virus x tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the farm during the season. Seed lots with no more than two percent potato virus x infection may be identified as virus x tested on certification labels.

3. Field conditions.

    a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering excessive insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.

    b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, a laboratory test may be required or strips of unkilled vines must be left in the seed fields to facilitate final inspections, or both. When strips are left for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.

    c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.

    d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.

    e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official postharvest tests shall be considered ineligible for certification.

4. Appeal. Inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done prior to reinspection.

5. Bacterial ring rot control.

    a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.

    b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.

    c. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.

6. The variety name stated on the application will be the standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared

by the grower will be presumed correct if the documentation provided is valid and the variety description characteristics meet the requirements of the chapter.

7. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the potatoes were randomly inspected, and at the time of the inspection the field or seed lot met the rules of the department.

History: Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012; July 1, 2020; October 1, 2024.
General Authority: NDCC 28-32
Law Implemented: NDCC 4.1-55-02

74-04-01-09. Postharvest testing program.

1. All foundation and basic seed potato fields must be randomly sampled and tested if the grower intends to plant the same seed lot or sell to growers who intend to enter the lot for certification the following year. Only seed lots with three-tenths of one percent total serious virus or less during field inspections are eligible for postharvest testing.

2. The results ~~will~~must be based on ~~visible~~visual inspection of the plants for virus or viruslike symptoms from the sample the grower submitted. However, laboratory testing may be used on varieties that have slight or latent symptoms.

3. Other factors such as vigor, other diseases, and any factor that might impair seed quality will be considered in the postharvest testing program.

4. Information concerning sample size and time to submit samples will be available from the state seed department.

5. Lots failing the postharvest test ~~will~~may be ineligible for planting in the certification program.

6. In the event of frost or other serious malfunctions of the postharvest grow-out test, eligibility of a seed lot will be based on the current field readings or a laboratory test at the discretion of the state seed department.

7. Seed lots showing excessive amounts of virus in the postharvest test may be disqualified for final certification. The level at which to disqualify the lot will be established by the seed commissioner.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; January 2, 2006; October 1, 2012; October 1, 2024.
General Authority: NDCC 28-32
Law Implemented: NDCC 4.1-55-02

74-04-01-10. Storage and packaging requirements.

1. A storage to be eligible must have been cleaned and disinfected prior to harvest. Storages not previously used for certified seed must be inspected by the state seed department.

2. Seed potatoes to be eligible for final certification must be stored in a warehouse containing only seed potatoes which have been field-inspected. Such warehouses may contain field-inspected stocks rejected for seed certification for causes other than such diseases as ring rot.

3. Equipment for handling, sorting, or grading can be used only on certified stock, but also must be cleaned and disinfected.

4. Containers.

   a. Graded stocks must be placed in new sacks, clean crates, totes, or bulk containers which are labeled in an approved manner to indicate the lot contains certified seed potatoes.

   b. Brands or markings must feature "North Dakota" as the production area.

   c. No used bags may be brought into the farming operation.

   d. It is highly recommended that all containers be disinfected for the grower's own protection.

5. Out-of-state storage. Growers, upon special application, may be permitted final certification on eligible stocks in approved nearby storages outside the state.

6. Bin inspection. Certified storages may be checked by an authorized inspector during the storage season.

7. Yield and storage reports. ~~Before labels will be issued for a lot of potatoes, a~~A report will be given to the state seed department stating yield of each field entered for certification and the location of the storages.

8. Transfers of seed potatoes to other parties. A lot of seed potatoes eligible for final certification may be transferred to another party along with labels provided authorization is given by the state seed department and the grower.

9. Each bin containing certified seed potatoes must be plainly labeled for certification with the grower's name and address, hundredweight [45.36 kilograms] or bushels [35.24 liters], variety, and field identification.

10. All basic and foundation seed lots and other seed lots intended for recertification must be stored in identifiable, clearly separated bins. Bins containing two or more seed lots of a variety without a divider or some other method of separation will be downgraded to the appropriate generation or disease tolerance level.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; October 1, 2012; October 1, 2024.
General Authority: NDCC 28-32
Law Implemented: NDCC 4.1-55-02

TITLE 75

DEPARTMENT OF HUMAN SERVICES

OCTOBER 2024

CHAPTER 75-03-14

75-03-14-04.1. Background checks and criminal conviction - Effect on licensure, certification, or approval.

1. The department requires an initial fingerprint-based criminal background check for each applicant and adult household member residing in the dwelling. Subsequent fingerprint-based background checks are not required when a foster care provider maintains continuous licensure, certification, or approval, unless the authorized licensing agent, supervising agency, or the department determines a need exists to conduct a subsequent investigation.

2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check. An annual child abuse and neglect index must be completed and placed in the licensing, certification, or approval file.

3. A foster care provider, or adult household members residing in the dwelling must not be known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery, if a class A or B felony under subsection 2 of that section; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines ~~that~~ the individual has not been sufficiently rehabilitated.

(1) The department ~~will~~may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions has elapsed.

(2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on an individual's ability to provide foster care for children.

5. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B or C felony ~~under subdivision c of subsection 2 of that section~~ or a class ~~B felony under subdivision d of subsection 2 of that section~~A misdemeanor; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that an individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions. The department may not be compelled to make such determination.

6. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community;

   b. Acknowledged by the individual; or

   c. Discovered by the authorized agent or department as a result of a background check.

8. The department may request a fingerprint-based criminal background check whenever a licensed, certified, or approved foster care provider or adult household member is known to have been involved in, charged with, or convicted of an offense.

9. The department shall review fingerprint-based criminal background check results as follows:

   a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

   b. The department shall assign the individual's request for review to a department review panel.

   c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

e. The final decision of the review panel may not be appealed.

10. The department may excuse an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an individual is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the individual lived during the eleven years preceding the signed authorization for the background check.

11. A foster care provider consecutively licensed or approved prior to August 1, 1999, is not required to have a record of a fingerprint-based background check on file.

History: Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016; October 1, 2019; April 1, 2024; October 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-14.1-05. Employees and nonemployees.

1. The shelter care program clearly shall define, in writing, the roles and responsibilities of the employees and nonemployees assuring the health and safety of the resident and coordination of the resident's safe return to the custodian, parent, or guardian.

2. The shelter care program shall establish policy and procedures for employee and nonemployee roles and responsibilities, including:

   a. Initial fingerprint-based criminal background checks for employees and a criminal background check for nonemployees;

   b. Annual child abuse and neglect checks;

   c. Job descriptions; and

   d. Assigned shifts and protocol for shift changes.

3. A shelter care program shall hire a supervisor of shelter care program operations and the supervisor:

   a. Must have a bachelor's degree in business or public administration, social work, behavioral science, or a human services field and have two years of related work experience in administration;

   b. Shall ensure the shelter care program has written policy and procedure;

   c. Shall oversee daily operations;

   d. Shall administer admission and discharge criteria; and

   e. Shall provide adequate supervision to all employees and nonemployees.

4. A shelter care program shall hire employees and the employees:

   a. Must be at least twenty years of age;

   b. Must have a high school diploma or equivalent;

   c. Shall assure and be devoted to the health and safety of each resident in placement and coordination of the resident's safe return to the custodian, parent, or guardian;

   d. Shall achieve the competencies necessary to meet the needs and engage appropriately with each resident in placement;

   e. Shall prepare meals;

   f. Shall organize activities and structure a daily routine for the resident in placement; and

   g. Shall document a daily activity log to share with the custodian, parent, or guardian.

5. A shelter care program shall ensure there are adequate employees working to meet the minimum employee-to-resident ratios, including:

   a. A rotating on-call employee who must be available twenty-four hours a day, seven days a week; and

b. Regardless of awake or overnight hours, the shelter care program must have no fewer than one employee for each six residents in placement.

6. A shelter care program, utilizing nonemployees, shall:

a. Ensure nonemployees are at least twenty years of age;

b. Develop and provide a copy of a description of nonemployee duties and specified responsibilities;

c. Designate an employee to supervise and evaluate nonemployees;

d. Develop a plan for the orientation and training of nonemployees, including the philosophy of the shelter care program and the needs of the residents and the residents' families;

e. Develop a policy stating nonemployees may support employees, but may not depend on nonemployees to carry out the duties of the certified shelter care program on a permanent basis;

f. Develop a policy stating nonemployees may be counted as an employee for purposes of employee-to-resident ratio requirements imposed by this chapter, if all equivalent training requirements are met;

g. Develop a policy stating nonemployees shall create records of incidents that occur during their presence at the shelter care program to the same extent employees are required to create such records; and

h. Conduct a criminal background check on all nonemployees with direct contact with residents.

7. The shelter care program shall maintain a file on each employee; including:

a. Employment application, including a record of previous employment;

b. Results of an initial fingerprint-based criminal background check and subsequent background checks as determined necessary;

c. Results of the initial child abuse or neglect record, and annually thereafter;

d. A job description specifying the employee's roles and responsibilities;

e. A statement signed by the employee acknowledging the confidentiality policy;

f. Documentation of an annual training record detailing the date, topic, and length of presentation; and

g. Evidence of the employee having read and received a copy of the law and shelter program procedures requiring the reporting of suspected child abuse and neglect, initially upon hire and annually thereafter.

8. The shelter care program shall maintain a file on each nonemployee, including:

a. Personal identification information;

b. The results of a criminal background check, motor vehicle operator's license record, as applicable, and child abuse or neglect record;

c. A description of duties;

d. Orientation and training records consisting of name of presenter, date of presentation, topic of presentation, and length of presentation;

e. A statement signed by the nonemployee indicating the nonemployee has read and received a copy of the law and facility procedures requiring the reporting of suspected child abuse and neglect pursuant to North Dakota Century Code chapter 50-25.1, initially and annually thereafter; and

f. A statement signed by the nonemployee acknowledging the confidentiality policy.

9. The shelter program shall adopt a policy regarding the retention of employee and nonemployee files.

History: Effective January 1, 2022; amended effective April 1, 2024; October 1, 2024.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-01.4, 50-06-01.10

75-03-14.1-05.1. Background check and criminal conviction - Effect on operation of agency or employment or placement by agency.

1. The department requires an initial fingerprint-based criminal background check for each employee with direct contact with residents and a criminal background check for each nonemployee with direct contact with residents. Subsequent fingerprint-based background checks are not required for an employee who maintains continuous employment at the shelter care program unless the program or the department determines a need exists to conduct a subsequent investigation.

2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check and criminal background check. An annual child abuse and neglect index must be completed and placed in the employee or nonemployee file.

3. A shelter care program supervisor may not be, and a shelter care program may not employ or place, in any capacity that involves or permits contact between an employee or nonemployee and any resident cared for by the shelter care program, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; 12.1-41, Uniform Act on Prevention of Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery, if a class A or B felony under subsection 2 of that section; 12.1-22-02 burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines the individual has not been sufficiently rehabilitated.

(1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment for all criminal convictions has elapsed.

(2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on an individual's ability to provide shelter care for children.

5. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B or C felony ~~under subdivision c of subsection 2 of that section~~ or a class ~~B felony under subdivision d of subsection 2 of that section~~A misdemeanor; or chapter 19-03.1, Uniform Controlled Substances Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine an individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions. The department is not compelled to make such determination.

6. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community;

   b. Acknowledged by the individual; or

   c. Discovered by the authorized agent or department as a result of a background check.

8. The department may request a fingerprint-based or a criminal background check if an employee or nonemployee of the certified shelter care program is known to have been involved in, charged with, or convicted of an offense.

9. The department shall review fingerprint-based criminal background check results as follows:

   a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

   b. The department shall assign the individual's request for review to a department review panel.

   c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

e. The final decision of the review panel may not be appealed.

10. The shelter care program shall make an offer of employment to an employee conditioned upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the shelter care program may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee is limited to supervised interaction with residents.

11. The department may excuse an employee from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an employee is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the employee lived during the eleven years preceding the signed authorization for the background check.

12. A shelter care program employee or nonemployee shall comply with this section or must be an employee otherwise qualified and employed by a certified shelter care program prior to April 1, 2024.

History: Effective April 1, 2024; amended effective October 1, 2024.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06-01.4, 50-06-01.10

75-03-17-16.2. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee, contracted service providers, or nonemployee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1- 16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children, 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery, if class A or B felony under subsection 2 of that section; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of a child;or 14-09-22.1, neglect of a child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.

      (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions has elapsed.

      (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. A facility shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 1.

3. The department has determined the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.

4. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if class B or C felony ~~under subdivision c of subsection 2 of that section~~ or a class ~~B felony under subdivision d of subsection 2 of that section~~A misdemeanor; or chapter 19-03.1, Uniform Controlled Substances Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge

or release from any term of probation, parole, or other form of community corrections or imprisonment, for all other criminal convictions. The department may not be compelled to make such determination.

5. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

6. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community;

   b. Acknowledged by the individual; or

   c. Discovered by the facility, authorized agent, or department as result of a background check.

7. The facility shall require a fingerprint-based criminal background check and child abuse or neglect index be completed for each employee and nonemployee.

8. The facility shall make an offer of employment to an employee or an offer of placement to a nonemployee conditional upon the individual's consent to complete required background checks. While awaiting the results of the required background checks, a facility may choose to provide training and orientation to an employee or nonemployee. However, until the completed and approved required background check results are placed in the employee or nonemployee file, the employee or nonemployee shall only have supervised interaction with any child cared for by the facility.

9. A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, plead guilty to, or pled no contest to a criminal offense.

10. If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or facilities, the facility shall request a reference from all previous group home, residential child care facility, and facility employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.

11. The facility shall perform a background check for reported suspected child abuse or neglect each year on each facility employee. Each employee, including direct care staff, supervisors, administrators, administrative, and facility maintenance staff, shall complete a department-approved authorization for child abuse and neglect background check form no later than the first day of employment and annually thereafter to facilitate the background checks required under this subsection.

12. The department may excuse an individual from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an individual is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

13. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section.

14. Fingerprint-based criminal background check results must be reviewed as follows:

a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

b. The department shall assign the individual's request for review to a department review panel.

c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

e. The final decision of the review panel may not be appealed.

History: Effective April 1, 2016; amended effective July 1, 2022; April 1, 2024; October 1, 2024.
General Authority: NDCC 25-03.2-10
Law Implemented: NDCC 25-03.2-03, 25-03.2-04.1, 25-03.2-07

75-03-36-02. Child-placing agency license.

1. Application for a child-placing agency license must be made on an application form provided by the department.

2. At the initial application, the applicant shall submit a written purpose and policy statement for the general operation and management of the child-placing agency. The statement must include:

   a. The purpose of the child-placing agency, the geographic area the agency expects to serve, the ages of children to be placed, and any other specific factors regarding the children to be placed or the homes in which the children will be placed;

   b. A written placement policy, including parental agreement forms, and a description of the legal procedures which will be used to obtain the authority to place the child; and

   c. A written statement of the fees that will be charged for each service.

3. Upon receipt of the application for license or renewal of license, the department shall conduct a licensing study or a license review to determine if the applicant meets all applicable requirements for licensure.

4. After completion of a licensing study, the department shall issue a license to any applicant that meets all requirements for licensure.

5. The department shall renew the license on the expiration date of the previous year's license if:

   a. The licensed child-placing agency makes written application for renewal prior to the expiration date of its current license;

   b. The licensed child-placing agency continues to meet all requirements for licensure at the time of the relicensing study; and

   c. The licensed child-placing agency submits a copy of its yearly budget ~~and annual audit~~ of expenditures.

6. If the department determines that an application or accompanying information is incomplete or erroneous, the department shall notify the applicant of the specific deficiencies or errors, and the applicant shall submit the required or corrected information. The department may not issue or renew a license until it receives all required or corrected information.

7. The licensure requirements of this chapter do not apply to human service zones nor does this chapter apply to child-placing activities undertaken by human service zones.

History: Effective April 1, 2010; amended effective October 1, 2024.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12

75-03-36-13. Background checks and criminal conviction - Effect on licensure.

1. The department requires an initial fingerprint-based criminal background check for each child-placing agency owner, employee, or nonemployee with direct contact with clients. An initial fingerprint-based criminal background check is also required for each prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home. Subsequent fingerprint-based background checks are not required for an employee, nonemployee, prospective adoptive parent, foster care provider,

or any adult household member who maintains continuous employment, licensure, or affiliation with the child-placing agency unless the child-placing agency or the department determines a need exists to conduct a subsequent investigation.

2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based criminal background check. An annual child abuse and neglect index check must be completed and placed in the personnel file for each employee and nonemployee or in the client file for each prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home.

3. A prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home may not be licensed, certified, or approved, or a child-placing agency owner, employee, or nonemployee may not be known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter, or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson;12.1-22-01, robbery, if a class A or B felony under section 2 of that section; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child or 14-09-22.1, neglect of child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.

      (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions has elapsed.

      (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the individual's ability to serve the public in a capacity as an adoptive home placement, a foster care provider, and as an owner, employee, or nonemployee of a child-placing agency.

5. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B or C felony ~~under subdivision c of subsection 2 of that section~~ or a class ~~B felony under subdivision d of subsection 2 of that~~

~~section~~A misdemeanor; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions. The department may not be compelled to make such determination.

6. The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community;

   b. Acknowledged by the individual; or

   c. Discovered by the child-placing agency, authorized agent, or department as a result of a background check.

8. The department may request a fingerprint-based criminal background check whenever an owner, employee, or nonemployee of the child-placing agency, a prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home is known to have been involved in, charged with, or convicted of an offense.

9. The department shall review fingerprint-based criminal background check results as follows:

   a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

   b. The department shall assign the individual's request for review to a department review panel.

   c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

   d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

   e. The final decision of the review panel may not be appealed.

10. The child-placing agency shall make an offer of employment to an employee or an offer of placement to a nonemployee conditioned upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the child-placing agency may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee may have only supervised interaction with clients.

11. The department may excuse an owner, employee, or nonemployee of a child-placing agency, prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home from providing fingerprints if usable

prints have not been obtained after two sets of prints have been submitted and rejected. If an owner, employee, or nonemployee of a child-placing agency, prospective adoptive parent, foster care provider, or any adult household member living in the prospective adoptive parent or foster care provider's home is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the individual lived during the eleven years preceding the signed authorization for the background check.

12 A child-placing agency shall establish written policies and engage in practices that conform to those policies to effectively implement this section, and North Dakota Century Code sections 50-11.3-02 and 50-12-03.2.

13 A child-placing agency shall establish written policies specific to how the child-placing agency will proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective April 1, 2010; amended effective April 1, 2016; July 1, 2020; April 1, 2024; October 1, 2024.
General Authority: NDCC 50-11-03, 50-11.3-01, 50-12-05
Law Implemented: NDCC 50-11-06.8, 50-11.3-01, 50-12-03.2

CHAPTER 75-03-40

75-03-40-25. Background checks and criminal conviction - Effect on operation of facility or employment by facility.

1. The department requires an initial ~~fingeprint-based~~fingerprint-based criminal background check for all personnel with direct contact with residents. Subsequent fingerprint-based background checks are not required for personnel maintaining continuous employment at the facility, unless the department determines a need exists to conduct a subsequent investigation.

2. The department requires a child abuse and neglect index check as part of the ~~intial~~initial fingerprint-based background check. An annual child abuse and neglect index check must be completed and placed in the personnel file.

3. A facility administrator may not be, and a facility may not employ or place, in any capacity that involves or permits contact between personnel and any resident cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; if a class A or B felony under subsection 2 of that section; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines the individual has not been sufficiently rehabilitated.

      (1) The department may not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions has elapsed.

      (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

4. The department has determined the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of care to children.

5. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07,

harassment; 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult-penalty, if a class B or C felony ~~under subdivision c of subsection 2 of that section~~ or a class ~~B felony under subdivision d of subsection 2 of that section~~A misdemeanor; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions. The department may not be compelled to make such determination.

6. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community verified by source documents;

   b. Acknowledged by the individual; or

   c. Discovered by the facility, authorized agent, or department as a result of a background check.

8. The department may request a fingerprint-based criminal background check if personnel of the facility are known to have been involved in, charged with, or convicted of an offense.

9. Fingerprint-based criminal background check results must be reviewed as follows:

   a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

   b. The department shall assign the individual's request for review to a department review panel.

   c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

   d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

   e. The final decision of the review panel may not be appealed.

10. The facility shall make an offer of employment to an employee conditioned upon the individual's consent to complete required background checks. While awaiting the results of the required background check, the facility may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee may only have supervised interaction with residents.

11. The department may excuse personnel from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If personnel are excused from providing fingerprints, the department may conduct a nationwide name-based

criminal history record investigation in any state in which the personnel lived during the eleven years preceding the signed authorization for the background check.

12. A facility shall establish written policies and engage in practices that conform to those policies to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

13. A facility shall establish written policies specific to how the facility shall proceed if personnel is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective October 1, 2019; amended effective April 1, 2024; October 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02, 50-11-06.8

75-03-40-38. Aftercare.

The facility shall ~~have~~establish written policies and procedures regarding how the six-month aftercare requirements must be implemented to best meet the needs of residents and families, including completion of an aftercare plan that identifies how the facility will ensure continuity of services provided to the resident and the resident's parent or guardian, postdischarge.

1. The aftercare plan must be created prior to discharge in collaboration with the resident and the resident's custodian, parent, or guardian and must include:

   a. A list of followup appointments scheduled by the facility;

   b. A list of resident and family supports;

   c. A list of resources and referrals completed by the facility engagement specialist to meet the needs of the resident, which includes documentation that a release of information was signed by the custodian, parent, or guardian for the family engagement specialist to maintain postdischarge communication regarding services;

   d. Coordination with and contact information for local service providers;

   e. A safety plan created to address treatment needs of the resident upon return to the community;

   f. ~~Documentation~~Documented plan for engagement with the resident and the resident's custodian, parent, or guardian, service providers, and other relevant parties; and

   g. Documented participation in child and family team meetings if the resident remains in foster care.

2. Aftercare policy applies to all residents accepted into the facility for treatment. If a resident is placed as an emergency placement and not approved for treatment, aftercare services are not required.

3. The aftercare six-month followup period must begin the day following the resident's discharge from the facility. The facility shall implement the aftercare plan developed as part of the discharge planning process. The facility may directly provide aftercare services and supports or coordinate with local service providers.

4. The facility shall conduct a department-approved postresidential outcomes survey at the conclusion of the six-month required aftercare period.

5. Postdischarge aftercare services must be provided by the facility as follows:

a. If a resident discharged from the facility remains in foster care, the facility shall collaborate with the custodial agency to implement the six-month aftercare plan.

b. If a resident is discharged and no longer in foster care, the facility shall coordinate the ongoing six-month aftercare with the resident and resident's parent or guardian.

c. If a resident is successfully discharged, but does require readmission to a facility, the aftercare services will discontinue and a new aftercare period will begin postdischarge from the current facility placement.

History: Effective October 1, 2019; amended effective October 1, 2021; April 1, 2024; October 1, 2024.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11-02

75-03-41-02. Application - Effect of license.

1. An ~~applicantion~~application may not be approved for a supervised independent living program license until the department has reviewed the need for additional supervised independent living programs. To enable the department to determine the need for a new supervised independent living program, the applicant shall submit an initial application, including the following documentation and information to the department:

   a. The number, gender, and age range of the residents to be served;

   b. The employee staffing, including a list of full-time and part-time positions by job titles and descriptions;

   c. A description of the proposed program;

   d. A proposed budget; and

   e. The geographic location of the supervised independent living program.

2. Upon receipt of initial application, the department shall:

   a. Review the detailed plan for the operation proposed by the applicant;

   b. Ask for additional materials or information necessary for evaluation of need;

   c. Respond in writing within thirty days of receipt of all required information from the applicant; and

   d. Send written notice of determination of need. The notice must state the specific reason for the determination. If the department determines there is no need for additional supervised independent living programs, the department may deny the initial application. If the department determines there is need for additional supervised independent living programs, the notice must be accompanied by an authorization for the applicant to move forward with the application process for a license to operate a supervised independent living program.

3. If an applicant receives authorization to apply for a license to operate a supervised independent living program, an application must be submitted in the form and manner prescribed by the department, which will initiate a document-based review or onsite visit at least every two years.

4. After completion of a licensing study, the department shall issue a license to an applicant that meets all requirements for licensure to provide a supervised independent living program.

5. Each agency shall carry general comprehensive liability insurance.

6. The department shall renew the license on the expiration date of the previous license if:

   a. The agency makes written application for renewal prior to the expiration date of its current license; and

   b. The agency continues to meet all requirements for licensure at the time of the licensing study or license review.

7. If the department determines an application, renewal of license, or accompanying information is incomplete or erroneous, the department shall notify the applicant of the specific

deficiencies or errors, and the applicant shall submit the required or corrected information. The department may not issue or renew a license until it receives all required or corrected information.

8. A supervised independent living program license is in force and effect for the period stated thereon, not to exceed two years, is nontransferable, and is valid only to the agency providing the program oversight for the number of clients indicated on the license.

History: Effective October 1, 2019; amended effective April 1, 2024; October 1, 2024.
General Authority: NDCC 50-06-05.1, 50-11-03
Law Implemented: NDCC 50-06-05.1, 50-11-03

75-03-41-18. Background checks and criminal conviction - Effect on operation of agency or employment by agency.

1. The department requires an initial fingerprint-based criminal background check for each employee or nonemployee with direct contact with clients. Subsequent fingerprint-based background checks are not required for an employee who maintains continuous employment at the supervised independent living program unless the program or the department determines a need exists to conduct a subsequent investigation. Subsequent fingerprint-based background checks for nonemployees are not required unless the program or department determines a need exists to conduct a subsequent investigation.

2. The department requires a child abuse and neglect index check as part of the initial fingerprint-based background check. An annual child abuse and neglect index check must be completed and placed in the personnel file.

3. An agency may not employ an employee or place a nonemployee, in any capacity that involves or permits contact between an employee or nonemployee and any client provided supervised independent living programming by the agency, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or 19-03.1, Uniform Controlled Substance Act, if class A, B, or C felony under that chapter; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-20-12.3, sexual extortion; 12.1-21-01, arson; 12.1-22-01, robbery; if a class A or B felony under section 2 of that section or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 12.1-31-07, endangering an eligible adult - penalty; 12.1-31-07.1, exploitation of an eligible adult - penalty; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.

(1) The department will not consider a claim the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions has elapsed.

(2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

4. The department has determined the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of supervised independent living programs and services.

5. In the case of offenses described in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; or 12.1-17-07.1, stalking; 12.1-22-01, robbery, if a class C felony; or 12.1-31-07.1, exploitation of an eligible adult - penalty, if a class B or C felony ~~under subdivision c of subsection 2 of that section~~ or a ~~B felony under subdivision d of subsection 2 of that section~~class A misdemeanor; or chapter 19-03.1, Uniform Controlled Substance Act, if a class A, B, or C, felony; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment for all other criminal convictions. The department may not be compelled to make such determination.

6. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual"s criminal history.

7. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:

   a. Common knowledge in the community verified by source documents;

   b. Acknowledged by the individual; or

   c. Discovered by the agency or department as a result of a background check.

8. The department may request a fingerprint-based criminal background check whenever an employee or nonemployee of the agency is known to have been involved in, charged with, or convicted of an offense.

9. The department may review fingerprint-based criminal background check results as follows:

   a. If an individual disputes the accuracy or completeness of the information contained in the fingerprint-based criminal background check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.

   b. The department shall assign the individual's request for review to a department review panel.

   c. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

d. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

e. The final decision of the review panel may not be appealed.

10. The supervised independent living program shall make an offer of employment to an employee conditioned upon the individual's consent to complete a required background check. While awaiting the results of the required background check, the supervised independent living program may choose to provide training and orientation to an employee. However, until the completed and approved required background check results are placed in the employee file, the employee is limited to supervised interaction with clients.

11. The department may excuse an employee or nonemployee from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If an employee or nonemployee is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the employee or nonemployee lived during the eleven years preceding the signed authorization for the background check.

12. An agency shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.

13 An agency shall establish written policies specific to how the agency shall proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective October 1, 2019; amended effective April 1, 2024; October 1, 2024.
General Authority: NDCC 50-06-05.1, 50-11-03
Law Implemented: NDCC 50-06-05.1, 50-11-06.8

TITLE 90

STATE BOARD OF WATER WELL CONTRACTORS

OCTOBER 2024

ARTICLE 90-01
GENERAL ADMINISTRATION

Chapter
90-01-01 Board Organization ~~of Board~~
90-01-02 ~~Application of Rules~~Definitions
90-01-03 Continuing Education

CHAPTER 90-01-01
BOARD ORGANIZATION ~~OF BOARD~~

Section
90-01-01-01 ~~Organization of~~ State Board of Water Well Contractors Organization
90-01-01-02 Certification Purpose

90-01-01-01. ~~Organization of state~~State board of water well contractors organization.

1. **History.** The 1971 legislative assembly passed the act providing for ~~licensing of~~ water well contractors licensing and creating the state board of water well contractors, codified as North Dakota Century Code chapter 43-35. The 1985 legislative assembly added pump and pitless unit installers ~~and~~, the 1987 legislative assembly added monitoring well contractors, and the 2007 legislative assembly added geothermal system drillers to the coverage.

2. **Board membership.** ~~The board consists of six members. The state engineer and the director of the department of environmental quality, or their duly authorized designees, are ex officio members. Two members are water well contractors appointed by the governor, one member is a pump and pitless unit installer appointed by the governor, and one member is appointed at large by the governor~~Membership of the state board of water well contractors is detailed in North Dakota Century Code section 43-35-03.

3. **Executive ~~secretary and treasurer~~secretary-treasurer.** The board shall appoint the executive ~~secretary and treasurer of the board is appointed by the board~~secretary-treasurer, who is responsible for ~~the~~board administration ~~of the board's activities,~~ and ~~is responsible for~~ the examining process ~~provided for by~~in North Dakota Century Code chapter 43-35.

4. **Inquiries.** Inquiries regarding the board or examinations should be addressed to the executive ~~secretary and treasurer~~secretary-treasurer:

   Secretary-Treasurer
   State Board of Water Well Contractors
   ~~900 East Boulevard Avenue~~1200 Memorial Highway

Bismarck, North Dakota ~~58505-0850~~58504-5262

History: Amended effective November 1, 1981; December 1, 1985; January 1, 1988; May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02~~43-35-10
Law Implemented: NDCC 28-32-02, 43-35-02, 43-35-03, 43-35-04

90-01-01-02. Certification purpose.

The board's philosophy in enforcing North Dakota Century Code chapter 43-35 must, at all times, be for the quantity and quality protection of ground water resources.

History: Effective October 1, 2024.
General Authority: NDCC 43-35-10
Law Implemented: NDCC 43-35-01

CHAPTER 90-01-02
~~APPLICATION OF RULES~~DEFINITIONS

Section
90-01-02-01 ~~Definition - Wells~~Definitions

90-01-02-01. ~~Definition - Wells~~Definitions.

~~This title, the rules and regulations adopted by the department of environmental quality, and North Dakota Century Code chapter 43-35 are applicable to all openings in the earth's surface wherein ground water is sought whether such opening is made for the purpose of extracting ground water, discovering or observing ground water, or monitoring the level, quantity, or quality of ground water~~Unless the context otherwise requires, the following definitions apply to this article:

1. "Certificate holder" means a certified water well contractor, pump and pitless unit installer, geothermal system installer, or monitoring well contractor.

2. "Continuing education" means accredited educational experience derived from participation in approved lectures, seminars, or correspondence courses.

3. "Hour" means a minimum of fifty continuing education instruction minutes.

4. "In charge" means a certificate holder has actual supervisory power over the work and makes onsite work and progress inspections.

5. "One-year apprenticeship or experience" means twelve months of full-time employment in constructing water wells or monitoring wells or installing pump and pitless units or geothermal systems under the direct supervision of a certificate holder in the same area of expertise as they are acquiring experience.

6. "Wells" is defined in subsection 5 of North Dakota Century Code section 43-35-02.

History: Effective March 1, 1984; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-02, 43-35-13, 45-35-19, 45-35-23

CHAPTER 90-01-03
CONTINUING EDUCATION

Section
90-01-03-01 Continuing Education - Defined [Repealed]
90-01-03-02 Coursework
90-01-03-03 Preapproval by Board
90-01-03-04 Request Preapproval
90-01-03-05 Request Approval After Course
90-01-03-06 Hours
90-01-03-07 Hour Defined [Repealed]
90-01-03-08 Noncompliance

90-01-03-01. Continuing education - Defined.

Repealed effective October 1, 2024.

~~As used in this chapter, "continuing education", unless the context otherwise requires, means accredited educational experience derived from participation in approved lectures, seminars, and correspondence courses.~~

~~**History:** Effective May 1, 2002.~~
~~**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10~~
~~**Law Implemented:** NDCC 43-35-23~~

90-01-03-02. Coursework.

~~The board will consider courses in the following areas to be acceptable when considering approval.~~ Coursework may be provided by:

1. The national ground water association;
2. The North Dakota well drillers association;
3. The department of environmental quality;
4. The ~~state water commission~~department of water resources; or
5. Any board-approved course provider.

History: Effective May 1, 2002; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-23

90-01-03-03. Preapproval by board.

A continuing education course must be preapproved by the board unless otherwise provided by law.

History: Effective May 1, 2002; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-23

90-01-03-04. Request preapproval.

The continuing education course provider or certificate holder shall request ~~for~~continuing education coursework preapproval ~~of the continuing education coursework~~ by submitting to the board a course outline, the instructor's name, the ~~length of the~~ training duration, and an explanation of how the training

relates to ~~the~~water well, pump and pitless unit, geothermal system, or monitoring well construction ~~and~~or service ~~of water wells~~.

History: Effective May 1, 2002; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-23

90-01-03-05. Request approval after course.

A certificate holder may request continuing education approval ~~of education~~ that was not preapproved by submitting to the board ~~verification of~~ attendance verification, a course outline, the instructor's name, the ~~length of the~~ training duration, an explanation of how the training relates to ~~the~~water well, pump and pitless unit, geothermal system, or monitoring well construction ~~and~~or service ~~of water wells~~, and an explanation of why preapproval was not obtained. ~~In such instance, the~~The board shall determine on a case-by-case basis whether to approve continuing education that was not preapproved.

History: Effective May 1, 2002; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-23

90-01-03-06. Hours.

Each certificate holder shall earn ~~at least twelve hours of~~ board-approved continuing education hours every two-year reporting cycle to qualify for certificate renewal. A water well contractor, geothermal system installer, or monitoring well contractor shall earn at least six hours and a pump and pitless unit installer shall earn at least two hours of board-approved continuing education every reporting cycle. A new certificate holder is required to earn ~~twelve hours of~~the board-approved continuing education credits during the two years following the ~~year of~~ initial certification year. An hour may not be used for more than one reporting period.

History: Effective May 1, 2002; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-17, 43-35-23

90-01-03-07. Hour defined.

Repealed effective October 1, 2024.

~~An "hour" of continuing education means a minimum of fifty minutes of instruction.~~

~~**History:** Effective May 1, 2002.~~
~~**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10~~
~~**Law Implemented:** NDCC 43-35-23~~

90-01-03-08. Noncompliance.

~~Each~~A certificate holder who fails to complete the ~~twelve~~required board-approved continuing education hours ~~of continuing education~~ during the reporting period ~~shall not be~~is not eligible for certificate renewal. Such individual may complete the required hours ~~prior to April first~~by March thirty-first of the following ~~the~~ year ~~in which the requirement is in effect~~ and be eligible for certificate renewal. After ~~April first~~March thirty-first, the certificate holder ~~must~~shall reapply and pass the examination required to initially obtain a certificate. ~~No hours may be used for more than one reporting period.~~

History: Effective May 1, 2002; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-17~~43-35-10
Law Implemented: NDCC 43-35-17

ARTICLE 90-02
OPERATIONS

Chapter
90-02-01 Examination
90-02-02 Certification
90-02-03 Reporting and ~~Investigation~~Operations
90-02-04 Action Before Board [Repealed]

CHAPTER 90-02-01
EXAMINATION

Section
90-02-01-01 Examination Preparation ~~of Examination~~
90-02-01-02 Supervision and Correction
90-02-01-02.1 Examination - When Held - Notice
90-02-01-03 Examination Dates ~~of Examination~~
90-02-01-04 ~~Place of~~ Examination Location
90-02-01-05 Examination Procedure
90-02-01-06 Waiting Period

90-02-01-01. ~~Preparation of examination~~Examination preparation.

The board shall arrange for an examination to be prepared ~~which shall be presented to the~~for board ~~for~~ approval. If a majority of the board finds that the proposed examination fairly tests the skills and knowledge needed to be a ~~certified water well contractor, pump and pitless unit installer, or monitoring well contractor~~certificate holder, it shall approve such examination and order its use. The examination ~~shall~~may be modified~~, revised, or changed~~ from time to time at the board's discretion ~~of the board~~.

History: Amended effective May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-12

90-02-01-02. Supervision and correction.

The examination shall be given, supervised, and corrected by a board-appointed representative ~~appointed by the board~~, who shall report the results to the board.

History: Amended effective May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-12

90-02-01-02.1. Examination - When held - Notice.

The board shall hold meetings at such times and such places as the board designates to administer an examination to persons desiring to become certified as certificate holders or geothermal system drillers. The board shall give no less than ten days' written notice to each applicant of the time and place of such examination. The board shall develop separate examinations for the certification of water well contractors, water well pump and pitless unit installers, monitoring well contractors, and geothermal system drillers.

History: Effective October 1, 2024.
General Authority: NDCC 43-35-10
Law Implemented: NDCC 43-35-12

90-02-01-03. ~~Dates of examination~~Examination dates.

The examination to become a ~~certified water well contractor, pump and pitless unit installer, or monitoring well contractor shall~~certificate holder must be given four times each year, during ~~the months of~~ February, May, August, and November. The exact date ~~shall~~must be announced by the appointed examination representative ~~to all persons known to be interested,~~ at least thirty days before the ~~date established for the giving of the examinations~~examination.

History: Amended effective May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-12

90-02-01-04. ~~Place of examination~~Examination location.

The examination must be given in the ~~offices~~office of the ~~state water commission~~department of water resources or in Bismarck, North Dakota.

History: Amended effective May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-12

90-02-01-05. Examination procedure.

Each applicant may spend up to four hours writing the examination. No books, charts, tables, notes, or other ~~helps shall~~guidance may be used. A minimum score of seventy percent ~~shall be~~is required to pass the examination.

History: Amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-12

90-02-01-06. Waiting period.

Any person failing to pass the examination ~~shall not be allowed to take it again until at least the second time it shall be offered~~may not take the examination for a period of one year immediately following the failure.

History: Amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-12~~, 43-35-21~~

CHAPTER 90-02-02
CERTIFICATION

Section	
90-02-02-01	Certification - How Obtained
90-02-02-01.1	Purpose of Certification [Repealed]
90-02-02-01.2	Certificate - How Obtained - Fee - Bond
90-02-02-01.3	Bond Required
90-02-02-02	Qualified Applicants - How Determined - Initial Certification
90-02-02-02.1	~~Definition of One Year's Experience~~One-year Apprenticeship or Experience Requirements
90-02-02-02.2	Certification by Examination - Time Limit
90-02-02-02.3	Conviction Not Bar to Certification - Exceptions
90-02-02-02.4	Renewal of Certificate - Continuing Education
90-02-02-03	Qualified Applicants - How Determined - Renewal
90-02-02-04	Renewal Application - Time Limit
90-02-02-05	Willful Violation - Penalty [Repealed]
90-02-02-06	Expiration of Grandfather Clause [Repealed]
90-02-02-07	Certification by Reciprocity - How Obtained [Repealed]

90-02-02-01. Certification - How obtained.

The ~~secretary of the board shall maintain a supply of certificates and decals and shall, upon proper application,~~board secretary-treasurer shall furnish ~~such~~ certificates and decals to qualified applicants who have passed the examination upon receipt of a board-approved application and submission of the proper fee and bond.

History: Amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-13, 43-35-16, 43-35-17

90-02-02-01.1. Purpose of certification.

Repealed effective October 1, 2024.

~~The philosophy of the board in enforcing North Dakota Century Code chapter 43-35 shall be at all times the protection of the quantity and the quality of the ground water resources.~~

~~**History:** Effective March 1, 1984.~~
~~**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10~~
~~**Law Implemented:** NDCC 43-35-01~~

90-02-02-01.2. Certificate - How obtained - Fee - Bond.

1. A person who takes the examination to become a certified water well contractor first shall complete a minimum of one-year apprenticeship or experience in water well drilling and construction under the direct supervision of a certified water well contractor or have completed a career and technical education program of at least one year in water well construction and shall make application to the board.

2. A person who takes the examination to become a certified water well pump and pitless unit installer first shall complete a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a certified water well pump and pitless unit installer or have completed a career and technical education program of at least one year in water well pump and pitless unit installation.

3. A person who takes the examination to become a certified monitoring well contractor first shall complete a minimum of one-year apprenticeship or experience in monitoring well construction under the direct supervision of a certified water well contractor or a certified monitoring well contractor or have completed a career and technical education program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the board.

4. A person who takes the examination to become a certified geothermal system driller first shall complete a minimum of one year of apprenticeship under the direct supervision of a certified geothermal system driller or have a minimum of two thousand forty installation hours of experience in geothermal system drilling working under the direct supervision of a certified geothermal system driller or first shall complete career and technical education relating to geothermal system drilling lasting at least one school year.

5. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of one hundred dollars. If upon examination the applicant is found to be qualified as a water well contractor, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not transferable.

History: Effective October 1, 2024.
General Authority: NDCC 43-35-10
Law Implemented: NDCC 43-35-13

90-02-02-01.3. Bond required.

Before receiving a certificate under North Dakota Century Cody chapter 43-35, a qualified applicant shall execute and deposit with the board a surety bond conditioned for the faithful performance of all water well, monitoring well, pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with North Dakota Century Code chapter 43-35. The required amount of a surety bond is fifteen thousand dollars for a water well contractor and is two thousand dollars for a monitoring well, pump and pitless unit, or geothermal system installation contractor.

History: Effective October 1, 2024.
General Authority: NDCC 43-35-10
Law Implemented: NDCC 43-35-14

90-02-02-02. Qualified applicants - How determined - Initial certification.

The board ~~first~~ must approve ~~the~~a party's certification application ~~of a party desiring certification for the first time and~~ if an applicant ~~is so approved and~~ has ~~otherwise~~ complied with ~~the requirements of~~ North Dakota Century Code sections 43-35-13 and 43-35-14. Upon board approval, the applicant is to be regarded as qualified and must be issued the proper certificate and decals.

History: Amended effective May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-13, 43-35-14, 43-35-16

90-02-02-02.1. ~~Definition of one year's~~One-year apprenticeship or experience requirements.

~~One year of experience as required by statute consists of twelve months of full-time employment in constructing water wells, installing pump and pitless units, or constructing monitoring wells under the~~

~~direct supervision of a certified water well contractor, pump and pitless unit installer, or monitoring well contractor which has~~The one-year apprenticeship or experience required by North Dakota Century Code section 43-35-13 must have occurred during the three years immediately preceding the application date ~~of application, or suitable~~. Suitable vocational training ~~approved by the~~may substitute for the one-year apprenticeship or experience requirement with board approval and at the board's sole discretion. ~~The board may, upon application and request, approve equivalent experience under a nonlicensed water well contractor, pump and pitless unit installer, or monitoring well contractor if~~If the experience was obtained in ~~a state other than North Dakota and if~~another state under a noncertificate holder water well contractor, pump and pitless unit installer, geothermal system installer, or monitoring well contractor, the board may approve equivalent experience if the board is satisfied in its sole discretion that the experience was ~~the~~ equivalent ~~of~~to working under ~~a certified water well contractor~~the direct supervision of a certificate holder in North Dakota. ~~The board may certify other experience as equivalent as it finds appropriate.~~

History: Effective March 1, 1984; amended effective May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10, 43-35-21
Law Implemented: NDCC 43-35-13

90-02-02-02.2. Certification by examination - Time limit.

Any ~~person~~applicant who ~~desires to become certified and who has taken~~passes the examination ~~and successfully passed it~~ shall complete the other certification requirements ~~for certification~~ within six months of examination result notification ~~of the passing score. Failure to complete certification within six months from such notification will nullify the passing score on the examination and the applicant shall initiate a new application in the same manner as if the applicant had not applied before, and be reexamined before becoming certified~~or the examination score must be nullified and the applicant shall be required to initiate a new application and be reexamined to obtain a certificate.

History: Effective March 1, 1984; amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-13

90-02-02-02.3. Conviction not bar to certification - Exceptions.

Conviction of an offense may not disqualify a person from certification under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a certificate holder, or that, following the conviction of any offense, the person is not sufficiently rehabilitated under North Dakota Century Cody section 12.1-33-02.1.

History: Effective October 1, 2024.
General Authority: NDCC 43-35-10
Law Implemented: NDCC 43-35-11.1

90-02-02-02.4. Renewal of certificate - Continuing education.

1. A certificate issued under North Dakota Century Code chapter 43-35 is valid for up to one year and expires on the thirty-first day of December in the year of issuance. To renew a certificate, a certificate holder shall submit to the board a completed renewal application. The completed renewal application must be:

   a. Submitted to the board before April first in the year following the certificate's expiration;

   b. Accompanied by a fee in an amount set by the board not to exceed two hundred dollars;

   c. Accompanied by any continuing education reporting information required under this section; and

d. Accompanied by a bond as provided in section 90-02-02-01.3.

2. Except as provided under subsection 3, every two years the renewal application must include reporting information verifying the applicant completed six hours of board-approved continuing education during the two-year reporting cycle.

3. A renewal application for certification as a water well pump and pitless unit installer must include reporting information verifying the applicant completed two hours of board-approved continuing education during the two-year reporting cycle.

History: Effective October 1, 2024.
General Authority: NDCC 43-35-10
Law Implemented: NDCC 43-35-17

90-02-02-03. Qualified applicants - How determined - Renewal.

~~Any person holding a current certification shall~~A certificate holder must be ~~regarded as qualified~~issued a renewal upon the ~~timely completion of an~~receipt of a board-approved renewal application and submission of the proper fee and bond. The ~~secretary~~secretary-treasurer may issue the ~~proper~~ certificates and decals for a renewal without board action ~~of the board~~.

History: Amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-13, 43-35-17

90-02-02-04. Renewal application - Time limit.

~~Any certification which~~If a renewal application has not been ~~renewed~~received prior to April first following ~~its~~certificate expiration, ~~shall~~the previous certificate holder is no longer ~~be renewable~~eligible for renewal. ~~If the holder thereof shall again desire to become a certified water well contractor, the holder shall be required to first pass the examination.~~

History: Amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-17

90-02-02-05. Willful violation - Penalty.

Repealed effective October 1, 2024.

~~Any person who is not certified as a water well contractor, pump and pitless unit installer, or monitoring well contractor who shall be found by the board to be in intentional violation of this title or of the applicable statutes may not be certified as a water well contractor, pump and pitless unit installer, or monitoring well contractor within one year of such violation as determined by the board.~~

~~**History:** Amended effective May 1, 2002.~~
~~**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10~~
~~**Law Implemented:** NDCC 43-35-20~~

90-02-02-06. Expiration of grandfather clause.

Repealed effective October 1, 2024.

~~The intent of North Dakota Century Code section 43-35-15, which provides for certification of certain persons without examination, was to include only persons engaged in well drilling during the year immediately preceding the effective date of North Dakota Century Code chapter 43-35 who made application prior to the first day of January 1972. Therefore, the board will not consider any applications for certification under this section.~~

~~**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10~~
~~**Law Implemented:** NDCC 43-35-15~~

90-02-02-07. Certification by reciprocity - How obtained.

Repealed effective October 1, 2024.

~~Any person desiring to be certified by reciprocity shall submit an application on forms furnished by the secretary and shall include therewith certified proof of the person's certification in the other state. Upon request of the board, the applicant may be required to submit additional information to assist the board in determining if the applicant's qualifications are equal to those required of certified water well contractors in North Dakota.~~

~~**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10~~
~~**Law Implemented:** NDCC 43-35-21~~

CHAPTER 90-02-03
REPORTING AND ~~INVESTIGATION~~OPERATIONS

Section
90-02-03-01 Completion Reports Required to Be Filed
90-02-03-02 Filing Reports
90-02-03-03 In Charge - Definition [Repealed]
90-02-03-04 Decal Required

90-02-03-01. Completion reports required to be filed.

The ~~secretary~~secretary-treasurer shall develop and ~~maintain a~~ supply ~~of~~well completion reporting forms ~~for reporting on the completion of wells~~ as required by North Dakota Century Code section 43-35-19.

History: Amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-19

90-02-03-02. Filing reports.

The ~~secretary~~secretary-treasurer shall maintain a systematic file of ~~such reports which shall be open to inspection during normal business hours by anyone desiring to use the information contained therein~~well completion reporting forms.

History: Amended effective October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC 43-35-19

90-02-03-03. In charge - Definition.

Repealed effective October 1, 2024.

~~No person shall engage in water well construction, pump and pitless unit installation, or monitoring well construction in this state unless the certified water well contractor, pump and pitless unit installer, or monitoring well contractor whose decal is on the primary equipment shall actually be in charge of its operation. A person is in charge only when the person has actual supervisory power over the work and makes onsite inspections of the work and progress.~~

~~**History:** Amended effective May 1, 2002.~~
~~**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10~~
~~**Law Implemented:** NDCC 43-35-19~~

90-02-03-04. Decal required.

Any water well equipment, pump and pitless unit equipment, geothermal equipment, or monitoring well equipment operating in North Dakota must prominently display a decal on the primary equipment that is under the charge of a ~~certified water well contractor, pump and pitless unit installer, or monitoring well contractor~~certificate holder. Before beginning ~~the operation of~~ any water well equipment, pump and pitless unit equipment, geothermal equipment, or monitoring well equipment operation, the ~~certified water well contractor, pump and pitless unit installer, or monitoring well contractor~~certificate holder in charge shall secure ~~from the board such~~ a decal from the board and ~~cause it to be placed~~place it on the primary equipment.

History: Amended effective May 1, 2002; October 1, 2024.
General Authority: NDCC ~~28-32-02, 43-35-01,~~ 43-35-10
Law Implemented: NDCC ~~43-35-19~~43-35-16

CHAPTER 90-02-04
ACTION BEFORE BOARD

[Repealed effective October 1, 2024]

~~Section~~
~~90-02-04-01 Procedure~~
~~90-02-04-02 Hearing Officer~~
~~90-02-04-03 Record~~
~~90-02-04-04 Violations - Penalty~~