NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 401

October 2026

Prepared by the Legislative Council staff
for the
Administrative Rules Committee

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STATE DEPARTMENT OF HEALTH

OCTOBER 2026

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CHAPTER 33-41-01
TATTOO AND BODY ART

[Repealed effective October 1, 2026]

CHAPTER 33-41-01.1
BODY ART CODE

Section

33-41-01.1-01. Definitions.

In this chapter, unless context or subject matter requires otherwise:

1. "Aftercare" means instructions that are required to be given to the client, verbally and in writing, by the body artist, specific to each body art procedure rendered, about caring for the body art and the surrounding area. These instructions must include information about whether to seek medical treatment.

2. "Antiseptic" means a product that is labeled as useful in preventing diseases caused by microorganisms present on the skin or mucosal surfaces of an individual. This includes products meant to kill germs or labeled as "antiseptic", "antimicrobial", "antibacterial", "microbicide", or "germicide", or other similar terms.

3. "Aseptic technique" means a set of specific practices and procedures performed under controlled conditions with the goal of minimizing contamination by pathogens.

4. "Autoclave" means a piece of equipment that is intended to sterilize products by means of pressurized steam.

5. "Automated instrument washer" means a mechanical washer designed specifically for the decontamination of instruments prior to sterilization.

6. "Biocompatible" means the ability of an object to be inserted into an individual without eliciting any undesirable local or systemic effects in that individual.

7. "Biohazardous waste" means any material that contains solid or liquid waste that can present a threat of infection to an individual if handled improperly, including body tissue, blood and bodily fluids, and wastes that contain blood or other potentially infectious material. This

includes absorbent materials with blood, bodily fluids, excretions and secretions, or other contaminated products used during a body art procedure.

8. "Bloodborne pathogen" means pathogenic microorganisms that are present in human blood and other human body fluids capable of transmitting disease in individuals. These pathogens include hepatitis B virus, hepatitis C virus, and human immunodeficiency virus.

9. "Body art" means body piercing, tattooing, cosmetic tattooing, branding, scarification, or subdermal implants.

10. "Body art establishment" means any place, studio, facility, or premises where the practice of body art is performed.

11. "Body artist" means any individual who performs body art services.

12. "Body piercing" means any method of piercing the skin or mucosa to place jewelry through the skin or mucosa. Body piercing, in the context of this chapter, does not include piercing of the noncartilaginous perimeter of the ear or earlobe with a single-use ear-piercing gun or stud-and-clasp ear-piercing systems.

13. "Branding" means the process in which a mark is burned into skin with the intention of leaving a permanent mark.

14. "Client" means an individual upon whom a body artist performs a body art procedure.

15. "Contaminated" means the presence or the reasonably anticipated presence of blood or other potential infectious material on an item or surface.

16. "Cosmetic tattooing" means any method of placing ink or other pigment into or under the skin or mucosa by the use of needles or any other instrument used to puncture the skin, including permanent or semipermanent make-up, scalp micropigmentation, and microblading.

17. "Cycle number" means a unique number that corresponds to each individual autoclave cycle. This number is used as an identifier, sometimes known as a lot number. It may include the date as part of the number.

18. "Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy pathogens on a surface. A surface or item is decontaminated when there are no infectious particles and the surface or item is rendered safe for handling, use, or disposal.

19. "Department" means the North Dakota department of health and human services.

20. "Disinfect" means to destroy pathogenic and other kinds of microorganisms by physical or chemical means.

21. "Disinfectant" means a product that is tuberculocidal and registered by the United States environmental protection agency, as indicated on the label for use in disinfection.

22. "Divider" means a partition used to separate or delineate a workstation from other workstations, such as nonabsorbent curtains, panels, or other hard partitions.

23. "Earlobe piercing" means the puncturing of the noncartilaginous perimeter of the ear or earlobe with a presterilized single-use stud-and-clasp ear-piercing system, also known as an ear-piercing gun, following the manufacturer's instructions.

24. "Equipment" means all machinery, containers, vessels, implements, and sinks that are used in conjunction with the storage or application of body art, by a body artist, or used in the sterilization, decontamination, or disinfection processes.

25. "Exposure control plan" means a written plan that is developed and implemented by employers who have determined that employees are exposed to bloodborne pathogens. An exposure control plan is mandated under the bloodborne pathogens standard listed at title 29, Code of Federal Regulations, part 1910, section 1030.

26. "Furnishings" means all fixtures, furniture, and other objects within a body art establishment that are not integral to the structure of the physical establishment, including walls, windows, and doors, and are not used in the storage of body art equipment and instruments, application of body art, or sterilization, decontamination, or disinfection processes.

27. "Gloves" means medical grade or examination grade, sterile or nonsterile, disposable, single-use, and full-hand coverings worn for protection against disease transmission.

28. "Guardian" means a person who has been appointed by a court as a guardian of a minor or incapacitated individual.

29. "Handwashing" means the act of cleaning one's hands for the purpose of removing dirt, soil, or microorganisms through the use of soap, warm water, and friction.

30. "Handwashing sink" means a sink equipped to provide water at a temperature of at least one hundred degrees Fahrenheit [37.78 degrees Celsius] through a mixing valve or combination faucet, used solely for washing hands, wrists, arms, or prosthetics.

31. "Imminent health hazard" means a product, practice, circumstance, or event that poses a significant threat to the health and safety of clients, employees, or the general public and which requires immediate correction.

32. "Informed consent and release form" means information that the body artist offers to the client or parent or guardian, verbally and in writing, on a single form or multiple forms, which is signed by the client or parent or guardian prior to a body art procedure to confirm that the client or parent or guardian of the client agrees to the procedure and is aware of any risks that might be involved.

33. "Initial piercing" means a new body piercing.

34. "Instruments" means tools, devices, or implements used for body art such as handpieces, needles, needle bars, tapers, tattoo machines, forceps, and other tools, which may come in contact with a client's body or may be exposed to bodily fluids during body art procedures.

35. "Jewelry" means any biocompatible object that is worn through a body piercing.

36. "Licensed medical professional" means an individual who is licensed under North Dakota law to provide medical or health care services within the individual's professional scope of practice.

37. "Maintenance" means repairs and upkeep of equipment as recommended by the manufacturer.

38. "Material documentation" means documentation intended to demonstrate the specifications and compliance of materials used for body jewelry, including material certificates, mill certificates, material composition reports, and other documentation demonstrating conformity with applicable material standards.

39. "Minor" means an individual under the age of eighteen years.

40. "Mobile body art establishment" means a licensed mobile establishment that is self-propelled or otherwise movable and operated by a body artist who performs body art procedures in the mobile body art establishment.

41. "Mucosa" means the moisture-secreting membrane lining of all body cavities or passages that communicate with the exterior, including the nose, mouth, vulva, and urethra.

42. "Municipal solid waste" means common trash or garbage that does not meet the definition of regulated waste.

43. "Operator" means any individual who controls any interest in, operates, or manages a fixed, mobile, or temporary body art establishment and who is responsible for compliance with this chapter, whether or not the individual is performing body art procedures.

44. "Other potentially infectious material" means:

a. The following human body fluids: semen; vaginal secretions; cerebrospinal fluid; synovial fluid; pleural fluid; pericardial fluid; peritoneal fluid; amniotic fluid; saliva in dental procedures; any body fluid that is visibly contaminated with blood, and all body fluids in situations in which it is difficult or impossible to differentiate between body fluids; and

b. Any unfixed tissue or organ, other than intact skin, from an individual.

45. "Personnel" means employees, body artists, contracted body artists, and agents of the body art establishment, whether or not actually performing body art activities.

46. "Procedure" means the act of performing body art.

47. "Procedure area" means a room, portion of a room, or any surface of an inanimate object that is designated to be used only to perform body art.

48. "Procedure site" means the area or location on the client's body selected for the placement of body art.

49. "Propylene gas" means any gas that is labeled with an American chemical society registry number of 115-07-1, including methylacetylene, propyne, propadiene, propane, and methyl ethylene.

50. "Regulated waste" means a liquid or semiliquid blood; items contaminated with blood or other potentially infectious material, which would release these substances if compressed; items that are caked with dried blood or other potentially infectious material and are capable of releasing these materials during handling; and contaminated sharps containing blood or other potentially infectious material.

51. "Safety data sheet" means a document for any potentially harmful chemical that includes information on the chemical's properties, hazards, protective measures, and safety precautions for handling, storing, and transportation. Safety data sheet is the current term for material safety data sheet.

52. "Scarification" means the practice in which a mark or marks are cut into skin with the intention of leaving a permanent mark.

53. "Sharps" means any object that can purposely or accidentally cut or penetrate the skin or mucosa, including presterilized single-use needles, scalpel blades, and razor blades.

54. "Sharps container" means a closable, puncture-resistant container that is leakproof on the sides and bottom, made specifically for the purpose of disposal of sharps, which can be

closed for handling, storage, transportation, and disposal. A sharps container must be clearly labeled with the international biohazard symbol.

55. "Single-use" means products or items that are intended for one-time, one-individual use and are disposed of after use on each client, including cotton swabs or cotton balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, disposable razors, needles, scalpel blades, stencils, marking pens, ink cups, and protective gloves.

56. "Spore test" means a biological monitoring test using bacterial spores to verify the effectiveness of an autoclave sterilization cycle. The test must be analyzed by a third-party laboratory that provides documentation of the results.

57. "Sterile" means a state of being free from viable microorganisms.

58. "Sterile gloves" means medical-grade or examination-grade disposable, single-use coverings for the hands worn for protection against disease transmission. Sterile gloves must be sterilized by the manufacturer or by following the sterilization protocol set forth by the glove manufacturer.

59. "Sterile water" means water that is purchased from the manufacturer sterile in a single-use container.

60. "Sterilization" means a validated process used to render a product free from viable microorganisms.

61. "Sterilization area" or "sterilization room" means a dedicated area or room designed and maintained for the cleaning, decontamination, and sterilization of reusable instruments in a manner that prevents cross-contamination.

62. "Sterilization log" means a physical or digital recording of autoclave cycle number, as well as type of sterilizer and cycle used, the load identification number, the load contents, the exposure parameters such as time and temperature, the operator's name or initials, date and time, and the results of mechanical, chemical, or biological monitoring.

63. "Strike branding" means the process by which a mark is burned with heated metal into the tissue of an individual.

64. "Subdermal implant" means to insert a foreign object beneath the skin to decorate an individual's body.

65. "Tattoo" or "tattooing" means any method of placing ink or other pigment into or under the skin or mucosa by the use of needles or any other instrument used to puncture the skin, resulting in permanent colorization of the skin or mucosa. This term includes all forms of cosmetic tattooing, as defined in this section.

66. "Temporary body art establishment" means any place or premises operating at a fixed location in the state where a body artist performs body art procedures for a limited duration, not to exceed fourteen days consecutively, but does not have a body art establishment license. This term includes conducting operations for the following purposes: educational, convention, public or private events, performance, product demonstration, or aesthetic shows.

67. "Thermal cautery unit" means electrical equipment that provides direct or alternating current that is passed through a resistant metal wire electrode, generating heat used for branding.

68. "Type 5 integrator" means a device designed to validate all three of the following critical variables of an autoclave cycle: time; temperature; and steam under pressure. Type 5

integrators verify autoclave cycle sterilization but are not a substitute for the required spore test.

69. "Ultrasonic" or "ultrasonic cleaner" means equipment that removes debris by cavitation.

70. "Ultraviolet air purifier" means a machine designed to use shortwave ultraviolet light to inactivate airborne pathogens and microorganisms.

71. "Workstation" means the area within a procedure area where a body artist performs body art. The workstation includes the client chair or table, counter, instrument stand, instrument tray, storage drawer, and body artist's chair.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-02. Health and hygiene standards and reporting requirements.

1. The body artist performing body art procedures and any personnel performing any other task or function in a body art establishment shall use aseptic techniques.

2. The body artist shall:

   a. Maintain hair, skin, and clothes in a clean condition;

   b. Keep fingernails short with smooth, filed edges to allow thorough cleaning and prevent glove tears; and

   c. Not wear artificial fingernails or extenders. Nail polish must be intact without chips or cracks.

3. The body artist must be free of any open wound that is not able to be covered, any infection, or other visible or communicable diseases that can be transmitted as a result of carrying out the body art procedure.

4. The body artist is prohibited from wearing jewelry on fingers, hands, and wrists while performing a body art procedure.

5. Before performing body art procedures, body artists shall thoroughly wash their hands in a handwashing sink as specified under sections 33-41-01.1-09 and 33-41-01.1-12, and according to the following handwashing procedure:

   a. Wet hands with clean, running water, and apply soap;

   b. Lather hands by rubbing them together, ensuring to lather the backs of hands, between fingers, and under nails;

   c. Scrub hands for at least twenty seconds;

   d. Rinse hands under clean, running water with your fingers pointed up toward the faucet and rinse down to your wrists;

   e. Dry with a clean disposable towel; and

   f. Use a new clean disposable towel to turn off the handles of the sink.

6. The body artist shall perform body art only with items, equipment, and instruments that have been sterilized or disinfected. All items, equipment, and instruments must be removed from the procedure area whenever no longer needed.

7. Eating or drinking of any kind is prohibited in the procedure area, in the area where body art preparations are performed, and in any location where instruments or supplies are stored or cleaned. Exceptions may be made for the purpose of rendering first aid.

8. The body artist or operator shall report to the department, within three business days of becoming aware of the complaint or condition for any complaint or adverse event resulting from the body art procedure or its aftercare, including an injury, complication, harmful reaction, infection that required treatment by a licensed medical professional, communicable disease reportable under North Dakota Century Code chapter 23-07 and article 33-06, or any adverse event suspected of being related to materials or products used during a body art procedure or its aftercare. A record of this report must be retained as specified in section 33-41-01.1-06, and include at a minimum:

   a. The name of the body artist;

   b. The date of procedure;

   c. Client information records as specified in section 33-41-01.1-07;

   d. Description of complaint, condition, or adverse event;

   e. Whether the client was required to seek medical attention; and

   f. A complete description of materials or products involved with manufacturer name, lot number, and batch number, if available and applicable.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-03. Jewelry standards and recordkeeping.

1. All jewelry used in initial body piercings must meet the following standards:

   a. All biocompatible materials, including steel, unalloyed or alloyed titanium, polymer or plastic material, and polytetrafluoroethylene, must meet the ASTM international or the international organization for standardization standards for implantation in effect on October 1, 2026. All jewelry used for initial piercing on individuals twelve and younger must be compliant with ASTM International standard F2923 in effect on October 1, 2026.

   b. Solid fourteen-karat or higher yellow, white, or rose gold that is nickel-free and cadmium-free used for initial piercing may not:

      (1) Be plated, unless using materials approved by this standard over solid fourteen-karat or higher yellow, white, or rose gold that is nickel and cadmium-free;

      (2) Be gold-filled; or

      (3) Have a gold overlay or vermeil.

   c. Solid unalloyed or alloyed platinum must be nickel-free and cadmium-free.

   d. Unalloyed niobium must be compliant with ASTM international standard B392, in effect on October 1, 2026.

   e. Glass must be lead-free.

f. All threaded or press-fit jewelry may not have threads on the exterior of posts and barbells.

g. Body jewelry surfaces and ends must be smooth and free of nicks.

h. Biocompatible objects inserted beneath the skin with no exit from the body must be composed only of implant-grade materials intended for long-term implantation in tissue and manufactured to recognized medical standards. Materials, jewelry, or objects not designated as implant-grade and approved by the department are prohibited. Approved materials include:

(1) Implant-grade silicone;

(2) Titanium meeting ASTM international standards or international organization for standardization standards;

(3) Polytetrafluoroethylene meeting ASTM international standards or international organization for standardization standards in effect on October 1, 2026; and

(4) Other materials designed for implantation, supported by manufacturer documentation verifying biocompatibility, and approved by the department.

2. The body art establishment operator shall retain printed or electronic records of receipts to certify the body art establishment has an adequate amount of jewelry for initial piercings, and shall:

a. Provide to the department, upon request, receipts for jewelry purchased for initial piercings and inventory present in the body art establishment. Receipts must list specifications for materials for each lot of jewelry purchased from the manufacturer as required in subsection 1; and

b. Retain records as specified in section 33-41-01.1-06.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-04. Specific regulations for specific types of body art.

1. For body piercing, it is prohibited to use ear-piercing stud-and-clasp systems or ear-piercing guns anywhere on the body other than the outer noncartilaginous perimeter and lobe of the ear.

2. For tattooing and cosmetic tattooing:

a. All inks, dyes, and pigments must be specifically manufactured for performing body art procedures and used according to the manufacturer's labeled instructions.

b. Only distilled water or sterile water may be used for the dilution of inks, dyes, or pigments. Diluting or mixing with potable water or any other substance is not acceptable. Such dilution must be single-use for the individual procedure. Immediately before a tattoo is applied, the quantity of the ink or pigment to be used must be transferred from the ink or pigment bottle and placed into single-use plastic cups or caps.

c. Upon completion of a tattoo, all single-use items and their contents must be discarded.

d. For individuals performing microblading or manual procedures, once the needle grouping or blade is attached to the handpiece it may not be removed and must be fully disposed of into a sharps container whether or not used.

3. For branding:

a. The client having branding procedures performed must be eighteen years of age or older. A parent or guardian may not consent to have branding performed on a minor.

b. The procedure area must have walls that extend to the ceiling and a closable door.

c. The procedure area must be equipped with an ultraviolet air purifier appropriately sized to the room based on the square footage and the manufacturer's recommendations.

d. Any individual present during the procedure, including all personnel and the client, shall wear protective eyewear, sterile gloves, and a mask rated as N-95 or higher.

e. Body artists shall use strike branding or a thermal cautery unit.

f. Only nongalvanized metal may be used for strike branding.

g. Body artists shall use only propylene gas to heat the metal for strike branding.

4. For scarification:

a. The client having scarification procedures performed must be eighteen years of age or older. A parent or guardian may not consent to have scarification performed on a minor.

b. The body artist shall wear disposable sleeves.

c. The procedure area must have walls that extend to the ceiling and a closable door.

d. The procedure area must be equipped with an ultraviolet air purifier appropriately sized to the room based on the square footage and the manufacturer's recommendations.

e. The body artist shall wear sterile gloves whenever coming into contact with sterile instruments during the procedure.

5. For subdermal implants:

a. The client having subdermal implant procedures performed must be eighteen years of age or older. A parent or guardian may not consent to have a subdermal implant performed on a minor.

b. The body artist shall wear disposable sleeves.

c. The body artist shall wear sterile gloves whenever coming into contact with sterile instruments during the procedure.

d. Any object that cannot be inserted through a single piercing channel and instead requires the creation of a subdermal tissue pocket that must be closed with sutures is considered a medical procedure. This does not include microdermal and surface anchor body piercing in which the anchor is inserted through a piercing channel and the jewelry or adornment remains visible through an opening at the skin surface without closure by sutures.

e. Medical procedures, including subdermal implants, may only be performed under the supervision of a licensed medical professional. A licensed medical professional acting within their lawful scope of practice is not required to be licensed under this chapter.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-05. Public notification requirements.

1. A current body art establishment license must be posted in a prominent and conspicuous area where it can be observed readily.

2. Written public educational information about the risk of body art procedures and aftercare information according to section 33-41-01.1-07 that has been approved by the department must be made available to the public upon request.

3. The body art establishment shall display publicly the name, address, and phone number of the public health entity that inspected the body art establishment, and the procedure for filing a complaint.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-06. Documentation requirements.

1. Each body art establishment shall have written operating procedures. The written operating procedures must be maintained, in physical or digital form, and must be available to the department upon request. The written operating procedures must include:

   a. A copy of the exposure control plan that includes written procedures on how the operator eliminates or minimizes personnel and client exposure to blood or other potentially infectious material;

   b. A description of all body art procedures performed;

   c. An inventory of all instruments and sharps and whether these items are reusable or presterilized, including names of manufacturers and serial, batch, or lot numbers, if applicable. Invoices, purchase orders, or receipts satisfy this requirement;

   d. Records relating to jewelry used for initial piercings and other biocompatible objects used in body art required under section 33-41-01.1-03;

   e. An inventory of inks, pigments, or dyes used for all body art procedures, including names of manufacturers, brands, and serial, batch, or lot numbers, if applicable. Invoices, purchase orders, or receipts satisfy this requirement;

   f. Safety data sheets for all chemicals stored on the premises;

   g. Disinfection and sterilization procedures and documentation required under section 33-41-01.1-08; and

   h. Regulated waste documentation required under section 33-41-01.1-11.

2. Client records must be stored in a secure location on the premises and kept confidential to prevent access by the public or unauthorized personnel. Client records must include:

   a. Customer informed consent and release forms as required under section 33-41-01.1-07;

   b. Risk notification information for each body art procedure;

c. Any complaint or adverse event report under section 33-41-01.1-02; and

d. Aftercare instructions for each body art procedure offered as required under section 33-41-01.1-07.

3. Personnel records must be stored in a secure location to prevent access by the public or unauthorized personnel. After one year, files for previous employees, contractors, or agents of the body art establishment may be retained off-site for a minimum of three years past employment termination.

a. Personnel records must include:

(1) Full name;

(2) Job title;

(3) Exact duties;

(4) Date of employment;

(5) Date of birth;

(6) Primary residence address;

(7) Contact phone number;

(8) Email address; and

(9) Copy of government-issued photo identification card.

b. Personnel training records must include:

(1) Trainee's name;

(2) Date of the training session;

(3) Individuals conducting the training;

(4) Names and job titles of all individuals attending the sessions;

(5) Name of qualified training provider and trainer qualifications as approved by the regulatory entity with jurisdiction; and

(6) Record of current cardiopulmonary resuscitation and first aid certification in accordance with renewal requirements of the certifying organizations or training provider and annual bloodborne pathogen training.

c. Personnel medical records must include:

(1) Body art establishments shall maintain records for each employee with occupational exposure as required by title 29, Code of Federal Regulations, part 1910, section 1030 and the department.

(2) All medical records must be stored in a manner that prohibits access from unauthorized personnel, such as a locked file cabinet, locked room, or password-protected files, and may not be disclosed without the employee's express written consent to any individual within or outside the premises, except as may be required by law.

(3) Medical records must be maintained for the length of time as dictated by title 29, Code of Federal Regulations, part 1910, section 1020.

4. All documentation and records referenced in this section must be retained for a minimum of three years and made available to the department upon request.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-07. Informed consent and release form.

1. Prior to a body artist performing body art on a client, an informed consent and release form must be completed and retained as specified in section 33-41-01.1-06. The informed consent and release form must be offered to the client in verbal and written formats. A physical or digital copy of the signed written informed consent and release form must be offered to the client. The informed consent and release form must include the following:

   a. A risk notification section that provides information detailing the risks and possible consequences of the body art procedure, such as complications including infection, allergic reaction, and scarring.

   b. A client evaluation section that evaluates the client's condition for receiving body art. This section must include the following language: "Consult a physician prior to the procedure if you have any concerns about any of the questions below:

      (1) Have you eaten within the past four hours?

      (2) Are you under the influence of drugs or alcohol?

      (3) Have you ingested anticoagulants, antiplatelet drugs, or nonsteroidal anti-inflammatory drugs such as aspirin or ibuprofen in the last twenty-four hours?

      (4) Have you ingested any medication that may inhibit the ability to heal a skin wound?

      (5) Do you have any allergies or adverse reactions to dyes, pigments, latex, iodine, or other such products?

      (6) Do you have hemophilia, epilepsy, a history of seizure, fainting, narcolepsy, or other conditions which could interfere with the body art procedure?

      (7) Do you have a history of any diseases, including skin diseases, that might inhibit the healing of the body art procedure?

      (8) Do you have any communicable diseases that could be transferred to another person during the procedure?

      (9) Do you have diabetes, high blood pressure, heart condition, heart disease, or any other conditions that could interfere with the body art procedure?

      (10) Are you or have you been pregnant within the last three months?"

   c. An aftercare section that must:

      (1) Be submitted with the initial license application in accordance with section 33-41-01.1-15 for every type of body art procedure offered in the licensed body art establishment for approval by the department;

(2) Be submitted to the department for approval for any body art procedure added after the initial license was issued prior to performance of the body art procedure;

(3) Provide information to the client about caring for the body art after the procedure and the surrounding area of the procedure site;

(4) Advise the client to consult a licensed medical professional, if required; and

(5) Contain the name, address, and phone number of the body art establishment.

d. A client information section that must include the following:

(1) Client first and last name as it appears on government-issued photo identification card;

(2) Client signature;

(3) Client date of birth as it appears on government-issued photo identification card;

(4) Client residential address;

(5) Client phone number;

(6) A copy of the client's state-issued driver's license, passport, military identification, or other government-issued photo identification with birthdate; and

(7) If the client is a minor, the minor must be accompanied by a parent or legal guardian who provides written consent, a signature, and is physically present during the body art procedure. The first and last name, signature, and copy of the proper identification of the minor's parent or guardian giving written consent to the body art procedure and who was physically present for the body art procedure performed on the minor must be retained in accordance with section 33-41-01.1-06. Identification for the minor must include a state-issued driver's license or government-issued photo identification if available, or a copy of the minor's birth certificate.

2. Each body artist shall record the following information regarding the body art procedures performed on the client:

a. First and last name of body artist who performed the body art procedure;

b. Type of body art procedure;

c. Location on body;

d. Design, if applicable;

e. Jewelry styles and sizes used for initial piercing, if applicable;

f. Expiration date, manufacturer, and lot number of all presterilized instruments used during the body art procedure which were applied to or inserted under the skin;

g. Batch of reusable sterilized instruments used during the body art procedure that corresponds with the sterilization log for those instruments or package applied to or inserted under the skin;

h. Expiration date, brand, color, batch, and lot number of all inks, dyes, and pigments used in the body art procedure;

i. Date and time the body art procedure was performed;

j. Any complications that occurred during the body art procedure; and

k. Signature of the body artist verifying the information provided.

3. An informed consent and release form statement, including a signature obtained from the client or, if the client is a minor, signatures obtained from the client and the client's parent or guardian, must confirm that the client:

a. Is obtaining services voluntarily of the client's own free will and volition;

b. Has had the opportunity to read and understand the informed consent and release form;

c. Has the ability to ask questions about the procedure or the informed consent and release form; and

d. Has received and understands verbal or written aftercare.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-08. Disinfection and sterilization procedures.

Each body art establishment operator shall establish written procedures for disinfection and sterilization of instruments and surfaces for the safety of personnel an clients, to maintain a clean and sanitary establishment, and to prevent cross-contamination by using aseptic technique, in addition to detailed training for personnel of the body art establishment. Documentation and records required under this section must be kept in accordance with section 33-41-01.1-06. Written procedures must include:

1. All surfaces used in the body art procedure area must be smooth, free of nicks, cuts, and tears, easily cleanable, and nonporous. Surfaces must be cleaned and disinfected with a disinfectant prior to and after the body art procedure.

2. All equipment and furnishings used for the performance of a body art procedure, which may be exposed to blood or other potential infectious material, must be covered with a single-use water resistant barrier during the procedure and discarded immediately after the procedure is complete.

3. All equipment used to clean and sterilize body art materials and reusable instruments must be suitable for its intended use. The equipment and devices must be used, cleaned, and maintained according to the manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the equipment must be available for inspection by the department if available from the body art establishment operator.

4. Whenever participating in any disinfection or sterilization procedures, individuals shall wear personal protective equipment that provides adequate protection from exposure or potential exposure to blood and other potentially infectious materials.

5. If using reusable instruments, the body art establishment operator shall develop written procedures for the methods used to clean, decontaminate, sterilize, package, label, and store all reusable instruments, tools, and materials used in body art procedures after each use and prior to use.

6. An autoclave, ultrasonic cleaner, automated instrument washer, and sterilization area or room are not required if the body art establishment uses only presterilized disposable instruments, presterilized body art materials, and presterilized supplies.

7. All instruments used for body art procedures must remain stored:

    a. In sterile packages marked with the cycle number until just prior to a body art procedure; or

    b. Cleaned, decontaminated, and sterilized in protected containers which may be disinfected and closed, after the instruments have been through an unpackaged sterilization cycle, and which must be sterilized again immediately prior to use.

8. Sterile instruments and body art materials may not be used if the package has been compromised. Sterile instruments and body art materials may not be used after the expiration date without first reprocessing and resterilizing. Body art instruments and materials must be disposed of in an appropriate waste or sharps container.

9. Records of instruments purchased presterilized must be maintained for at least three years.

10. Each body art establishment operator shall demonstrate that the autoclave used can achieve sterilization by conducting monthly spore tests. These tests must be verified through an independent certified laboratory. Additionally, the operator shall ensure that a type 5 integrator is used for each sterilization cycle, validating proper time, temperature, and steam under pressure or a combination of at least two of the following as reflected in the written sterilization procedure:

    a. Spore testing verified through an independent certified laboratory every two weeks;

    b. Data logger electronically tracking indicators for time, temperature, and pressure during the sterilization of each load; and

    c. Following autoclave manufacturer's manual instructions.

11. The body art establishment operator shall develop a written procedure for responding to a positive spore test and shall document remediation steps in the sterilization log for every reusable instrument and tool impacted by a test failure. This includes repeat testing, dates, and time frames. Failed spore tests determined to be the result of autoclave equipment failure require records of when the autoclave was removed from service, inspected, and repaired by a factory-authorized service professional.

    a. In the sterilization log, document procedures taken to remedy the positive spore test ruling out autoclave equipment failure.

    b. The following are required if the repeat spore test is positive:

        (1) The autoclave may not be used until it has been inspected or repaired and the specific reason for the positive test has been determined by a factory authorized service professional certified to repair and maintain the specific autoclave at issue;

        (2) The autoclave must pass a spore test before being put back into service after repairing or relocating; and

        (3) The body art establishment shall maintain records of sterilization cycles, maintenance of the autoclave, and spore tests in accordance with this chapter.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-09. Preparation and care of the procedure site.

1. Any surface of the skin or mucosa to receive a body art procedure must be intact and free from suspected abnormalities of the skin or mucosa, such as suspected rash, visible infection, sunburn, or moles.

2. a. Prior to, during, and after a body art procedure, the body artist shall wear gloves and use aseptic technique to ensure that the instruments and gloves are not contaminated, including:

   (1) Whenever setting up the procedure area touching containers, ink bottles, barrier films, exteriors of sterile packaging, and while assembling tattoo machines and needles;

   (2) Whenever prepping skin, applying stencils, or drawing designs on the skin;

   (3) Whenever performing the procedure;

   (4) Upon completion of the procedure, cleaning the procedure site, applying aftercare, and bandaging the procedure site; and

   (5) Whenever tearing down and disinfecting the procedure area.

   b. The gloves must be immediately discarded and the body artist's hands must be washed after the completion of each procedure, if gloves worn for a procedure are torn, punctured, or otherwise compromised, or at any other time if necessary to prevent cross-contamination.

3. Before a body art procedure is performed, the procedure site must be prepped with an antiseptic in accordance with the manufacturer's instructions.

4. Disposable razors used in preparation for a body art procedure must be single-use, provided with safety controls such as guards, and discarded immediately after use in a covered receptacle and disposed of through normal disposal methods approved for municipal solid waste. Razors contaminated with blood or other potentially infectious materials must be handled and disposed of as contaminated sharps in accordance with occupational safety and health administration's bloodborne pathogens standard, title 29, Code of Federal Regulations, part 1910, section 1030.

5. In the event of bleeding, all products used to stop the flow of blood or to absorb blood must be single-use and disposed of immediately after use in appropriate covered waste containers.

6. Any single-use items that contact the client must meet the requirements outlined in section 33-41-01.1-10.

7. Any products portioned out for the client must be discarded upon completion of the body art procedure.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-10. Requirements for single-use items.

1. Single-use items may not be used on more than one client for any reason. After use, all single-use needles, razors, and other sharps must be disposed of immediately in approved sharps containers.

2. All products applied to the skin, including body art stencils, pens, markers, and any other items that are used to mark the skin, must be single-use and disposable. Products used in the application of stencils must be dispensed and applied on the area to be tattooed with a suitable clean, single-use product and used in a manner to prevent contamination of the original container and its contents. The clean, single-use product must be used only once and then discarded.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-11. Regulated waste.

Each body art establishment operator shall develop written procedures to ensure that personnel are trained to safely handle and dispose of contaminated needles, sharps, blood, and other potentially infectious material as required for regulated waste. All regulated waste management records, pickup receipts, and documentation must be maintained in accordance with section 33-41-01.1-06. The regulated waste written procedures must include the following requirements:

1. Written procedures to safely handle, store, label, and dispose of contaminated sharps and other regulated waste, in addition to detailed training for personnel of the body art establishment are required.

2. All body art establishments shall register as a regulated waste-generating facility, when required.

3. Any waste, including biohazardous waste, mixed with regulated waste, must be managed as regulated waste.

4. Contaminated waste that does not release liquid blood or body fluids or that may release dried blood if compressed or handled may be placed in a covered receptacle and disposed of through normal approved disposal methods approved for municipal solid waste.

5. Bags used for regulated waste, other than sharps, must be packaged and sealed at the point of origin in a red biohazard bag that is labeled with the international biohazard symbol.

6. a. Sharps must be discarded at the point of origin into single-use or reusable sharps containers. Sharps may not be placed directly into double-walled corrugated containers.

   b. Sharps containers must be sealed when full. A sharps container is considered full if materials placed into it reach the designated fill line or, if a fill line is not indicated, if additional materials are not able to be placed into the container without force.

   c. Permanently mounted sharps container holders must bear the international biohazard symbol, if this information on the sharps container is concealed by the sharps container holder or mount.

   d. Reusable outer containers must be rigid and constructed of smooth, easily cleanable materials. Outer containers must be decontaminated after each use.

7. a. Regulated waste must be contained, stored, transported, and disposed of in accordance with chapter 33.1-20-12, including the requirements of title 29, Code of Federal Regulations, part 1910, section 1030.

   b. Indoor storage areas must:

      (1) Have restricted access;

(2) Be designated by signage;

(3) Be located away from pedestrian traffic;

(4) Be insect, rodent, and vermin free;

(5) Be constructed of smooth, easily cleanable materials that are impervious to liquids; and

(6) Be maintained in a sanitary condition.

c. Outdoor storage areas, including containers and trailers, must meet the requirements of subdivision b and be secured against vandalism and unauthorized entry.

8. a. Packages of regulated waste must remain sealed until picked up by a permitted transporter.

b. Ruptured or leaking packages of regulated waste must be placed into larger packaging without disturbing the original seal. All packages containing regulated waste must be visibly identifiable with the international biohazard symbol.

9. Transportation of regulated waste must comply with chapter 33.1-20-12.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-12. Requirements for premises.

1. All body art establishment operators and body artists working in any body art establishment must be at least eighteen years of age.

2. The body art establishment license must be posted in a prominent and conspicuous location in the body art establishment where it can be easily seen.

3. Each body art establishment shall comply with state and local building, fire, electrical, plumbing, water system, and wastewater system codes and ordinances and ensure that the general condition of the premises is maintained in good repair.

4. All body art establishments and body art procedure areas located inside a body art establishment must be completely separated by solid partitions or walls extending from floor to ceiling from any room used for habitation by an individual; any food establishment or room where food or beverages are prepared; any cosmetic, nail, or hair salon; or any room used for esthetician services, laser services including laser tattoo removal, or any other such activity that could cause potential contamination of work surfaces.

5. Walls, floors, ceilings, and other furnishings, such as lamps, countertops, drawers, and shelves on the premises must be maintained in a clean condition. All procedure areas and workstation surfaces are only used in the performance of body art procedures, including dividers, client chairs, and benches, and must be constructed of materials that are easily cleanable, and must be cleaned and disinfected after each client.

6. Each body art procedure area must be equipped with a separate, readily accessible handwashing sink that is supplied with soap and disposable paper towels in dispensers. A handwashing sink that is centrally located within a shared workroom or procedure area must serve not more than three body artists and must be separate from a restroom.

7. If reusable instruments are used in a body art establishment, a separate sterilization area or room is required. The sterilization area or room must meet the following requirements:

   a. The sterilization area or room must be set apart or arranged to maintain proper separation and safe distance from procedure areas to prevent cross-contamination and must be closed to the public;

   b. The sterilization area or room must be used only for cleaning, disinfecting, sterilizing, storage, and related tasks;

   c. A sink must be used only for cleaning contaminated instruments. This sink may not be used for handwashing;

   d. A covered ultrasonic cleaner or automated instrument washer must be included;

   e. Cabinets or drawers located within the sterilization area or room must be made of smooth, nonporous, wipeable materials;

   f. Body art procedures, retail sales, or other job tasks may not occur within the sterilization area or room; and

   g. The covered ultrasonic cleaner or automated instrument washer and the sink used for rinsing and scrubbing contaminated instruments must be separated from the autoclave to prevent contamination. Plexiglass, stainless steel, or other nonporous splash guards to prevent cross-contamination are allowed.

8. There must be a minimum of one restroom with a handwashing sink accessible to patrons. This handwashing sink may not be used for any other purposes.

9. All body art establishments shall have access to a service sink or curbed cleaning facility equipped with a floor drain if using a mop bucket and conveniently located for the disposal of mop water or similar liquid waste.

10. There must be a minimum of forty square feet [3.72 square meters] of floor space for each procedure area in the body art establishment or adequate space as otherwise approved by the department.

11. Ultrasonic cleaners used for cleaning instruments or other contaminated items are not allowed in the procedure area. Ultrasonic cleaners used only for cleaning noncontaminated jewelry or other noncontaminated items are allowed in the procedure area.

12. A lined waste receptacle must be provided in every procedure area and restroom and must be kept clean.

13. The body art establishment shall offer an area secluded from public view for clients requesting privacy. If a curtain or partition is used, it must be in compliance with this chapter.

14. The body art establishment shall have mechanical ventilation installed and maintained in compliance with all applicable local and state building codes and in accordance with the manufacturer's specifications.

15. The body art establishment shall have an artificial light source equivalent to at least twenty lumens per square foot three feet [0.91 meters] off the floor. Where the body art procedure is being performed and where instruments and sharps are assembled, there must be an artificial light source equivalent to at least one hundred lumens per square foot.

16. Animals of any kind are not allowed in a body art establishment except for the following:

a. Service animals may accompany an individual with a disability in all areas of the body art establishment; and

b. Fish aquariums are allowed only in waiting rooms. Fish aquariums must contain only aquatic species that can survive underwater for a minimum of forty-eight hours.

17. The body art establishment must be free of pests including insects, rodents, and vermin.

18. All noncontaminated instruments must be stored in a dry, closed cabinet, drawer, or tightly covered container suitable for protecting the contents from moisture and dust and reserved for the storage of such instruments.

19. Smoking and vaping are prohibited in all indoor areas.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-13. Temporary body art establishments.

1. Unless otherwise provided in this section, temporary body art establishments and temporary body art establishment licenses are subject to the same requirements as body art establishments and body art establishment licenses.

2. Temporary body art establishments shall meet the following requirements:

a. A temporary body art establishment must be equipped to properly sterilize instruments and provide evidence of a spore test performed on sterilization equipment no later than thirty days prior to the date of the event. Otherwise, single-use, prepackaged, sterilized instruments marked with an expiration date, lot number, and method of sterilization must be used;

b. A temporary body art establishment shall have the ability to clean and disinfect the body art procedure area. There must be at least forty square feet [3.72 square meters] of floor space for each body artist or adequate space as determined and approved by the department;

c. There must be at least one hundred foot-candles [1076.39 lux] of light at the level where the body art procedure is being performed;

d. Flooring must be a smooth and nonabsorbent surface that can be cleaned and disinfected or disposed of;

e. Temporary body art establishments shall provide enough temporary handwashing sinks with running water to adequately service the number of body artists present;

f. Temporary body art establishments shall supply a municipal solid waste receptacle, a regulated waste receptacle, and a sharps container within the procedure area or as close as practicable to where sharps are used; and

g. Temporary body art establishments shall have a written plan for the removal of the regulated waste by a licensed transporter.

3. A temporary body art establishment must be inspected by the department and a temporary body art license must be issued prior to the performance of any body art procedures.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01.1-14. Mobile body art establishments.

1. Unless otherwise provided in this section, a mobile body art establishment is subject to the same requirements as a body art establishment.

2. Mobile body art establishments shall meet the following requirements:

   a. Body art procedures performed in a mobile body art establishment must be done only from an enclosed vehicle such as a trailer or mobile vehicle. Body art procedures may not be performed outside of the enclosed vehicle;

   b. The enclosed vehicle:

      (1) Must contain and store all equipment, instruments, tools, and furnishings;

      (2) Must provide adequate space to safely perform body art and execute operating plans;

      (3) Must adequately and safely operate and meet the requirements of this chapter; and

      (4) May not be dependent on any outside services to meet the requirements of this chapter;

   c. The mobile body art establishment must be maintained in a clean and sanitary condition at all times. Doors must be self-closing and tight-fitting. Openable windows must have tight-fitting screens;

   d. If the mobile body art establishment does not exclusively use single-use disposable instruments, equipment, and supplies, then reusable instruments must be clean and sterilized using approved sterilization equipment available in accordance with all requirements of section 33-41-01.1-08 and a sterilization area or room in accordance with section 33-41-01.1-12;

   e. The operator only may use the mobile body art establishment for the purpose of performing body art procedures. Habitation or food preparation is not allowed inside the vehicle;

   f. The handwashing sink must be plumbed with hot and cold water at a temperature of at least one hundred degrees Fahrenheit [37.78 degrees Celsius] through a mixing valve or combination faucet use solely for washing hands, equipped with liquid soap, disposable paper towels in dispensers, and a wastebasket. An adequate supply of potable water must be maintained at all times during operation;

   g. All liquid wastes must be stored in an approved holding tank with a capacity at least fifteen percent greater than the capacity of the onboard potable water supply tank. Liquid wastes must be disposed of at a site approved by the department; and

   h. Restroom facilities must be available onsite for public use. A handwashing sink must be available inside the restroom cubicle. The handwashing sink must be supplied with hot and cold running water under pressure to a mixing-type faucet, liquid soap dispensed from a nonreusable container, and paper towels in a dispenser. Restroom doors must be self-closing and adequate ventilation must be available.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-15. License requirements.

1. A body art establishment may not operate without first having obtained a license issued by the department under North Dakota Century Code section 23-01-35.

2. A body art establishment, temporary body art establishment, or mobile body art establishment only may provide those body art procedures which are included on the initial application or renewal application.

3. The department shall issue a license to an applicant that meets all of the requirements of North Dakota Century Code sections 12.1-31-13 and 23-01-35 and this chapter.

4. An applicant shall submit an application for a license to the department in the form and manner prescribed by the department.

5. An application is not complete until all required information and verifications are submitted to the department.

6. The department may declare an application withdrawn if an applicant fails to submit all required information and verifications within thirty days of the department's notification to the applicant the application is incomplete.

7. Types of licenses include:

   a. Body art establishment;

   b. Mobile body art establishment; and

   c. Temporary body art establishment.

8. For an application to be complete, an applicant for a body art establishment license shall submit the following information to the department:

   a. Plans and specifications. Whenever a body art establishment is newly constructed, purchased, or an existing body art establishment is remodeled, a body art establishment operator shall submit to the department properly prepared plans and specifications for such construction or remodeling for review and approval by the department before construction or remodeling begins. The plans and specifications must be submitted a minimum of thirty days prior to the projected start date or event, and must include:

      (1) The proposed layout, arrangement, and construction materials, paying particular attention to all building and fire codes required by law and regulations;

      (2) Additional documentation as required by the department which may include:

         (a) Documentation of wastewater system, water system, ventilation system, and local planning and zoning approval from the regulatory authority;

         (b) Certifications stating all work was completed in accordance with applicable plumbing, electrical, building, and fire codes;

         (c) An inventory of all cleaning and sterilization equipment as it is to be used, if applicable; and

         (d) The layout of the reception area, the procedure areas, the cleaning and sterilization area, the storage area, and the toilet facilities; and

(3) The department shall approve the plans and specifications in writing if the requirements of North Dakota Century Code section 23-01-35 and this chapter are met and proceed with processing the license application. Failure to submit plans and specifications or failure to obtain written approval of plans and specifications by the department may result in the denial of an application for licensure;

b. A signed body art establishment license application and applicable license fee;

c. A statement of all types of body art procedures being offered must be indicated and aftercare instructions for each body art procedure must be provided. After initial licensure, the operator shall inform the department prior to offering any different types of body art procedures;

d. Record of current cardiopulmonary resuscitation and first aid certification and bloodborne pathogen training for body artists performing body art procedures, obtained from recognized training providers or organizations;

e. A copy of written operating procedures, upon request;

f. The license fee for a body art establishment in accordance with section 33-41-01.1-20;

g. Personnel records required under section 33-41-1.01-06, which must be available for review within ten days of opening and before any body art procedures are performed on clients in the body art establishment. All personnel working in any body art establishment are required by state and federal law to be a minimum of eighteen years of age; and

h. If using reusable instruments, spore test records, as required under section 33-41-01.1-08, which must be provided before any body art procedures are performed on clients in the body art establishment, and annually at the time of license renewal.

9. For an application to be complete, an applicant for a temporary body art establishment license shall submit the following information to the department:

a. A signed temporary body art establishment license application;

b. All information necessary for an application for a body art establishment as required by subsection 8;

c. If applicable, documentation demonstrating that the applicant is currently affiliated with a fixed body art establishment that is licensed by the department, and that the temporary site complies with North Dakota Century Code section 23-01-35 and this chapter; and

d. The license fee for a temporary body art establishment in accordance with section 33-41-01.1-20.

10. A temporary body art establishment license expires after fourteen days or the conclusion of the special event, whichever is sooner. A temporary body art establishment license is only valid for the dates specified on the license, and the licensed temporary body art establishment only may be operated on those dates.

11. For an application to be complete, an applicant for a mobile body art establishment license shall submit the following information to the department:

a. A signed mobile body art establishment license application;

b. All information necessary for an application for a body art establishment as required by subsection 8; and

c. The license fee for a mobile body art establishment in accordance with section 33-41-01.1-20.

12. a. A body art establishment license automatically expires annually on December thirty-first unless renewed.

b. A license may be renewed by December thirty-first of each year by submitting the renewal application provided by the department and paying the license fee required under section 33-41-01.1-20.

c. If the completed renewal application and fee are not received by December thirty-first, the license expires and the body art establishment may not operate.

d. Within sixty days after December thirty-first, an expired license may be renewed by submitting the renewal application, renewal fee, and a late fee required under section 33-41-01.1-20.

e. If the renewal application, renewal fee, and a late fee are not received within sixty days after December thirty-first, the license may not be renewed, and the applicant shall apply and meet the requirements for initial licensure to be granted a license.

13. A license for a body art establishment is not transferable.

14. A license for a body art establishment is valid for the services or locations identified in the license.

15. It is the responsibility of the body art establishment operator to ensure that all personnel comply with the requirements of North Dakota Century Code section 23-01-35 and this chapter.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-16. Prohibitions.

1. The department may prohibit the use of any procedure, device, product, or modality that the department determines to be unsafe or beyond the scope of practice authorized under North Dakota Century Code section 23-01-35 and this chapter. The authority applies to both currently available procedures and devices, as well as new or emerging practices in industry.

2. Body artists may not perform genital or nipple piercings on individuals under eighteen years of age. A parent or guardian may not consent to genital or nipple piercings performed on a minor.

3. Videotaping, photographing, or other recording, including live social media streaming, of body art procedures, whether during or after the procedure, is prohibited without the client's written consent. If the client is a minor, written consent from the parent or legal guardian is also required.

4. Body art procedures may not be performed on an individual who appears to be visibly impaired or otherwise unable to provide informed consent.

5. A body artist may not perform body art procedures while under the influence of alcohol or drugs.

6. A body art establishment may not operate without first obtaining the necessary licenses and approvals from the department as required by North Dakota Century Code section 23-01-35 and this chapter.

7. It is a violation of North Dakota Century Code section 23-01-35 and this chapter to obtain or attempt to obtain any body art establishment license by means of fraud, misrepresentation, or concealment.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-17. Inspection.

1. The department shall inspect each body art establishment for compliance with state law and this chapter prior to issuing a license to any body art establishment, and then at intervals deemed necessary by the department.

    a. Department representatives must be granted access to the premises of a body art establishment during normal hours of operation, including access to client and personnel records.

    b. The department must be allowed entry to the body art establishment at will when the establishment is occupied, whether for a routine inspection or not, including the need to investigate complaints or compliance.

2. Body art establishment inspections must be conducted at a frequency determined as often as necessary throughout the year to ensure compliance with North Dakota Century Code section 23-01-35 and this chapter and to ensure the health and safety of the general public.

3. Department representatives shall properly identify themselves upon entering a body art establishment to conduct an inspection.

4. It is a violation of North Dakota Century Code section 23-01-35 and this chapter for the operator or personnel in a body art establishment to knowingly:

    a. Conceal, withhold, or falsify records or evidence of a product, practice, circumstance, or event that could endanger the health and safety of guests, clients, employees, or the general public, and that requires immediate correction;

    b. Interfere with the performance of the duties of the department; or

    c. Make a false statement, representation, certification, record, report, or otherwise falsify information required to be submitted or maintained pursuant to North Dakota Century Code section 23-01-35 and this chapter.

5. A physical or digital copy of the inspection report must be furnished to the license holder or operator of the body art establishment.

6. If, after the inspection or investigation, the department finds that a body art establishment operator is in violation of North Dakota Century Code section 23-01-35 and this chapter, the department shall advise the body art establishment operator in writing of the violations and instruct the operator to take specific steps to correct such violations.

    a. If at any time the department has reasonable cause to suspect that public health may be at risk, it may place conditions on the license of a body art establishment;

    b. The department shall notify the body art establishment licenseholder and the operator in writing of the conditions; and

c. A body art establishment shall comply with all license conditions until the department has conducted an inspection, has determined that the license conditions are no longer necessary, and has issued an order removing the license conditions.

7. A body art establishment shall immediately discontinue operations of the affected area and body art procedure, use of an affected product, or unapproved or malfunctioning device or equipment upon discovery that an imminent health hazard exists. Each operator shall notify the department by phone or email within twenty-four hours of identifying an imminent health hazard.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-18. Denial, suspension, revocation, and disciplinary action.

1. The department may deny a license application or, after notice and a hearing in accordance with North Dakota Century Code chapter 28-32, suspend, revoke, or take other disciplinary action against the license of an individual who fails to comply with this section or with any of the rules adopted by the department.

2. Before the department takes disciplinary action against a licensee, the department shall notify the licensee in writing of the reason disciplinary action is being considered and shall provide a reasonable amount of time for response. The notice must be in writing and delivered personally by an inspector of the department or sent by registered or certified mail.

3. For repeated violations of North Dakota Century Code section 23-01-35 or this chapter, or for interference with department personnel in the performance of their duties, a license may be permanently revoked after a hearing in accordance with North Dakota Century Code chapter 28-32.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-19. Waiver provision.

Any provision of section 33-41-01.1-03, 33-41-01.1-08, 33-41-01.1-11, 33-41-01.1-12, 33-41-01.1-13, or 33-41-01.1-14 may be waived by the department in specific instances, provided such a waiver does not adversely affect the health and safety of the clients and operators and compliance with the provision would result in an unreasonable hardship upon the body art establishment. A waiver must be in writing for a specific provision. A refusal to grant a waiver is not subject to an appeal.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

33-41-01.1-20. License fees.

The following license fees must be submitted to the department with the appropriate application for initial licensure or renewal:

1. For a body art establishment, one hundred sixty dollars.

2. For a mobile body art establishment, one hundred sixty dollars.

3. For a temporary body art establishment that operates a special event at a fixed location for not more than fourteen consecutive days or the duration of the special event, whichever is less:

a. Fifty dollars for not more than five temporary or guest body artists;

b. One hundred dollars for six to ten temporary or guest body artists; or

c. One hundred fifty dollars for more than ten temporary or guest body artists.

4. For an initial body art license application, an administration fee of one hundred dollars is required in addition to fifty percent of the annual license fee if a plan review application is required. The license application administration fee does not apply to temporary body art establishments.

5. For a proprietor, a plan review application fee of fifty percent of the annual license fee if a plan review application is required.

6. For any license renewed after December thirty-first, a late fee equal to fifty percent of the annual license fee must be assessed in addition to the license fee.

History: Effective October 1, 2026.
General Authority: NDCC 23-01-35
Law Implemented: NDCC 23-01-35

CHAPTER 33-44-01

33-44-01-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Activation time" means the amount of time it is likely to take for an individual to begin to feel the effects of ingesting or inhaling usable marijuana.
2. "Adverse reaction" means an unwanted, unexpected, or dangerous effect caused by the administration of usable marijuana dispensed pursuant to North Dakota Century Code chapter 19-24.1.
3. "Analyte" means a component, substance, or chemical or microbiological constituent that is of interest in an analytical procedure or test.
4. "Batch" means a quantity of dried leaves and flowers from a harvest lot, a quantity of cannabinoid concentrate, or medical cannabinoid product from a process lot.
5. "Compliance test" means a test required by these rules to be performed by a laboratory selected by the department in order to allow the transfer or sale of usable marijuana.
6. "Container" means a sealed, hard- or soft-bodied receptacle in which usable marijuana is placed.
7. "Container identification number" means the identification number that was generated by the manufacturing facility at the time the usable marijuana was packaged and labeled for sale to the dispensary.
8. "Cotyledons" means an embryonic leaf of a plant, one or more of which are the first leaves to appear.
9. "Date of harvest" means the date the mature marijuana plants in a harvest lot were removed from the soil or other growing media. If the harvest occurred on more than one day, the "date of harvest" is the day the last mature marijuana plant in the harvest lot was removed from the soil or other growing media.
10. "Degradation compound" or "Pesticide degradate" means a resultant product from the transformation of a parent compound to a product with different physical and chemical properties, the fate and significance of which, is altered due to the structural changes.
11. "Harvest lot" means a specifically identified quantity of the same strain of marijuana that is cultivated utilizing the same growing practices, harvested within a seventy-two-hour period at the same location, and cured under uniform conditions.
12. "Hazardous waste" means the same as defined in North Dakota Century Code chapter 23-20.3.
13. "Laboratory" means a laboratory selected by the department in accordance with section 33-44-01-36 to sample and conduct tests in accordance with these rules.
14. "Medical marijuana waste" means the same as defined in North Dakota Century Code chapter 19-24.1.
15. "Net weight" means the gross weight minus the tare weight of the packaging.
16. "Parent compound" means the original molecular structure from which other compounds can be derived through a chemical reaction or natural breakdown process.

17. "Pediatric symbol" means the image, established by the department and made available to manufacturing facilities, indicating the product complies with the pediatric medical marijuana maximum concentration limit as defined in North Dakota Century Code chapter 19-24.1.

18. "Plant" means a marijuana plant that has produced cotyledons or a cutting of a marijuana plant that has produced cotyledons.

19. "Process lot" means any amount of:

    a. Cannabinoid concentrate of the same type and processed within a forty-eight-hour period, unless prior written authorization is received from the department, using the same extraction methods, standard operating procedures, and batches, not to exceed ~~three~~fourteen thousand grams in total, of the same strain from the same or a different harvest lot; or

    b. Medical cannabinoid product of the same type and processed within a forty-eight-hour period, unless prior written authorization is received from the department, using the same ingredients, standard operating procedures, and a process lot or process lots, not to exceed three, of cannabinoid concentrate as defined in subsection a.

20. "Product identity" means a common name of the product that is contained in the package.

21. "Remediation" means a process used by a manufacturing facility to remedy a lot or batch that has failed testing.

22. "Sterilization" means the removal of all micro-organisms and other pathogens from usable marijuana by treating it with approved chemicals or subjecting it to high heat.

23. "Tentatively identified compounds" means compounds detected in a sample using gas chromatography mass spectrometry or liquid chromatography mass spectrometry that are not among the target analytes for the residual solvent analysis and pesticide and mycotoxin analysis.

24. "Test sample" means anything collected by a laboratory from a compassion center for testing.

25. "Unit of sale" means an amount of usable marijuana commonly packaged in a container for transfer to a registered qualifying patient or registered designated caregiver, or capable of being packaged in a container for transfer to a registered qualifying patient or registered designated caregiver.

26. "Universal symbol" means the image, established by the department and made available to manufacturing facilities, indicating the product contains marijuana.

27. "Water activity" means a measure of the free moisture in usable marijuana and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

28. "Written notice" means a notice provided to the department via letter, electronic mail, or other electronic form or medium made available on the department's website.

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022; October 1, 2026.
General authority: NDCC 19-24.1-01
Law Implemented: NDCC 19-24.1-01

33-44-01-05. Expiration of registry identification cards.

~~An~~Except as provided in North Dakota Century Code section 19-24.1-03.3, an initial registry identification card expires ~~one year~~two years after the date of issuance~~, unless the health care~~

~~provider's written certification identifies the benefit from the medical use of marijuana is less than a year~~. To prevent interruption of possession of a valid registry identification card, a renewal of a registry identification card may have an expiration date from date of issuance in excess of ~~one year~~two years.

History: Effective April 1, 2018; amended effective October 1, 2026.
General Authority: NDCC 19-24.1-11
Law Implemented: NDCC 19-24.1-11

33-44-01-07.3. Compassion center certification fees.

~~The~~

1. Through October 31, 2026, the department shall collect certification fees for compassion center registrations as follows:

   ~~1.~~ a. For a manufacturing facility, seventy-five thousand dollars.

   ~~2.~~ b. For a dispensary, sixty thousand dollars.

   ~~3.~~ c. For a production only authorized manufacturing facility, forty thousand dollars.

   ~~4.~~ d. For a medical marijuana product processor only authorized manufacturing facility, twenty thousand dollars.

2. Effective November 1, 2026, the department shall collect certification fees for compassion center registrations as follows:

   a. For a manufacturing facility, one hundred ten thousand dollars.

   b. For a dispensary, ninety thousand dollars.

   c. For a production only authorized manufacturing facility, seventy thousand dollars.

   d. For a medical marijuana product processor only authorized manufacturing facility, fifty thousand dollars.

History: Effective October 1, 2022; amended effective October 1, 2023; October 1, 2026.
General Authority: NDCC 19-24.1-15
Law Implemented: NDCC 19-24.1-15

33-44-01-26. Manufacturing facility labeling.

1. A manufacturing facility shall label all usable marijuana in accordance with the following before ~~their~~its sale or transfer to a dispensary:

   a. A container holding dried leaves and flowers must include the following information:

      (1) ~~Manufacturers'~~Manufacturing facility's business or trade name and registry certification number;

      (2) Container identification number;

      (3) Batch number;

      (4) Date of harvest;

      (5) Name of strain;

      (6) Net weight in United States customary or metric units;

(7) Concentration of total tetrahydrocannabinol and total cannabidiol as identified by the laboratory selected by the department in accordance with section 33-44-01-36;

(8) Activation time expressed in words or through a pictogram;

(9) Expiration date;

(10) Universal symbol; and

(11) Consumer warnings that state:

(a) "This product is not approved by the Food and Drug Administration to treat, cure, or prevent any disease."

(b) "For use by North Dakota registered qualifying patients only."

(c) "Keep out of reach of children."

(d) "It is illegal to drive or to be in actual physical control of a motor vehicle while under the influence of marijuana."

b. A container holding a cannabinoid concentrate must include the following information:

(1) Manufacturing facility's business or trade name and registry certification number;

(2) Container identification number;

(3) Process lot number;

(4) Product identity;

(5) Date the concentrate was made;

(6) Net weight or volume in United States customary or metric units;

(7) If applicable, serving size and number of servings per container or amount suggested for use by the ~~consumer or~~registered qualifying patient at any one time;

(8) Concentration or amount of total tetrahydrocannabinol, and the concentration or amount of total cannabidiol, by weight or volume in the container as identified by the laboratory selected by the department in accordance with section 33-44-01-36;

(9) Activation time~~,~~ expressed in words or through a pictogram;

(10) Expiration date;

(11) A disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process;

(12) Universal symbol;

(13) Pediatric symbol, if applicable; and

(14) Consumer warnings that state:

(a) "This product is not approved by the Food and Drug Administration to treat, cure, or prevent any disease."

(b) "For use by North Dakota registered qualifying patients only."

(c) "Keep out of reach of children."

(d) "It is illegal to drive or to be in actual physical control of a motor vehicle while under the influence of marijuana."

c. A container holding a medical cannabinoid product must include the following information:

(1) ~~Manufacturers'~~Manufacturing facility's business or trade name and registry certification number;

(2) Container identification number;

(3) Process lot number;

(4) Product identity;

(5) Date the product was made;

(6) ~~Net~~If applicable, net weight or volume in United States customary or metric units;

(7) If applicable, serving size and number of servings per container;

(8) Concentration or amount of total tetrahydrocannabinol, and the concentration or amount of total cannabidiol, by weight or volume in each serving and in each container as identified by the laboratory selected by the department in accordance with section 33-44-01-36;

(9) List of ingredients in descending order or predominance by weight or volume used to process the medical cannabinoid product;

(10) Activation time~~,~~ expressed in words or through a pictogram;

(11) Expiration date;

(12) A disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process;

(13) Universal symbol;

(14) Pediatric symbol, if applicable; and

(15) Consumer warnings that state:

(a) "This product is not approved by the Food and Drug Administration to treat, cure, or prevent any disease."

(b) "For use by North Dakota registered qualifying patients only."

(c) "Keep out of reach of children."

(d) "It is illegal to drive or to be in actual physical control of a motor vehicle while under the influence of marijuana."

2. Usable marijuana labels required in accordance with this section must be no smaller than eight point, arial or calibri, font. If, due to the size of the container, sufficient space does not exist for a label containing all of the required information, the manufacturing facility may:

a. Use a peel-back or accordion label if, the peel-back or accordion label is easily identified as containing the required information; or

b. Reduce the size of the required information to six point font.

3. Usable marijuana labels may not contain the word "organic".

History: Effective April 1, 2018; amended effective October 1, 2019; July 1, 2022; October 1, 2026.
General Authority: NDCC 19-24.1-36
Law Implemented: NDCC 19-24.1-36

TITLE 33.1

DEPARTMENT OF ENVIRONMENTAL QUALITY

OCTOBER 2026

ARTICLE 33.1-21
~~CESSPOOLS,~~ SEPTIC TANKS~~, PRIVIES~~ AND ONSITE WASTEWATER TREATMENT SYSTEMS

CHAPTER 33.1-21-01
ONSITE WASTEWATER TREATMENT ~~SYSTEM INSTALLERS LICENSING~~SYSTEMS

33.1-21-01-01. ~~Installers licensing~~Authority.

~~1. Onsite wastewater treatment system installers licenses issued by local public health units under North Dakota Century Code section 23-35-08 valid on July 31, 2025, do not expire and must remain in effect until December 31, 2026, or if the department of environmental quality adopts rules regarding licensing, whichever occurs first.~~

~~**2. Until December 31, 2026, or if the department of environmental quality adopts rules regarding licensing, whichever occurs first, onsite wastewater treatment system installers that are not currently licensed may obtain a license from the department by submitting an application form prescribed by the department.**~~

The department has been authorized to provide and administer this chapter relating to onsite wastewater treatment systems. The department has exclusive authority to adopt rules regarding licensing, permitting, and inspections of onsite wastewater treatment systems as provided by North Dakota Century Code section 23.1-07.1-02.

History: Effective August 1, 2025; amended effective January 1, 2026; October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-02, ~~23.1-07.1-03~~23.1-07.1-04

33.1-21-01-02. Scope and purpose.

This chapter establishes procedures governing the licensing, permitting, and installation of onsite wastewater treatment systems. This chapter also establishes standards for training and installation of onsite wastewater treatment systems to ensure the protection of the general public and waters of the state from contamination by wastewater.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-03. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code title 23.1 and chapter 61-28, except:

1. "At-grade system" means a pressurized soil treatment and dispersal system in which wastewater effluent is dosed to an absorption bed that is constructed directly on original soil at the ground surface and covered by loamy soil materials.

2. "Baffle" means a device installed in a septic tank for proper operation of the tank and to provide maximum retention of solids, and includes vented sanitary tees, effluent filters, and submerged pipes in addition to those devices that are normally called baffles.

3. "Bedroom" means any room within a dwelling which reasonably may be used as a sleeping room and includes an unfinished area that has potential to become a bedroom.

4. "Capacity" means the liquid volume of a septic tank using inside dimensions below the outlet.

5. "Clean sand" means commercially processed, washed sand or naturally occurring sand that conforms to ASTM International Standard C-33.

6. "Distribution media" means the material used to provide void space in a dispersal component, through which effluent flows and is stored prior to infiltration. Distribution media includes drainfield rock, polystyrene beads, chambers, and pipe.

7. "Distribution pipes" means perforated pipes that distribute wastewater effluent within a distribution medium.

8. "Dosing device" means a commercially manufactured wastewater effluent pump, grinder pump, or siphon.

9. "Drainfield rock" means clean, commercially produced, and washed rock; crushed igneous rock; or similar insoluble, durable, and decay-resistant material. The size must range from three-fourths inch [1.905 centimeters] minimum diameter to two and one-half inches [6.35 centimeters] effective diameter.

10. "Dwelling" means any building or place used or intended to be used by human occupants as a single-family or multiple-family unit.

11. "Effluent filter" means a device installed on the outlet piping of a septic tank for the purpose of retaining solids of a specific size, which meets NSF/ANSI 46.

12. "Floodway" means the bed of a wetland or lake, the channel of a watercourse, or those portions of the adjoining floodplain, which are reasonably required to carry the regional flood discharge.

13. "Limiting factor" means any factor that adversely affects the soil's ability to effectively treat wastewater effluent. This encompasses actual soil saturation, redoximorphic features or active fluctuating seasonal soil water table, bedrock, layers or conditions of low or high permeability, or any physically identifiable condition that limits installation of a system.

14. "Mound system" means a soil treatment and dispersal system designed and installed such that all of the infiltrative surface is installed above grade, using clean sand between the bottom of the infiltrative surface and the original ground elevation utilizing pressure distribution and capped with suitable material to stabilize the surface and encourage vegetative growth.

15. "Parallel distribution" means the distribution of wastewater tank effluent by gravity which loads all sections of a system equally at the same time.

16. "Percolation rate" means the timed rate of drop of water infiltrating into a test hole. The percolation rate may be determined by the percolation test.

17. "Permeability" means the rate at which gases or liquids penetrate or pass through a bulk mass of soil or layer of soil.

18. "Permitting authority" means a North Dakota local public health unit, other political subdivision, or their designees.

19. "Plastic limit" means the soil moisture content below which the soil may be manipulated for purposes of installing a soil treatment system and above which manipulation may cause compaction or smearing. If a fragment of soil easily can be rolled into a thread one-eighth inch [0.3175 centimeters] in diameter, the moisture content is above the limit and the soil may not be used.

20. "Pressure distribution" means a network of distribution pipes in which effluent is forced through orifices under pressure.

21. "Redoximorphic features" means color patterns in the soil matrix, ped face, or pore linings caused by the reduction and oxidization of iron and manganese used to identify a fluctuating seasonal water table.

22. "Seepage bed" means an absorption facility consisting of an area greater than three feet [0.9144 meters] in width from which the entire earth contents have been removed and replaced with distribution media and a network of effluent distribution material, and covered with suitable backfill material.

23. "Serial distribution" means the distribution of wastewater tank effluent by gravity that progressively loads one section of a system to a predetermined level before overflowing to the succeeding section.

24. "Septic tank" means a watertight tank with minimum capacity of one thousand gallons [3785.41 liters] that meets the minimum requirements within this chapter, receives the discharge of wastewater from a building sewer or preceding tanks, stores liquid for a detention period that provides separation of solids from liquid and digestion of organic matter, and allows the wastewater effluent to discharge to a succeeding tank, treatment device or soil treatment area.

25. "Setback" means a separation distance measured horizontally.

26. "Slope" means the ratio of vertical rise or fall to horizontal distance expressed as a percentage.

27. "Soil boring" means any type of excavating capable of revealing in detail characteristics of soils penetrated.

28. "Soil treatment area" means an area where wastewater effluent is dispersed into the soil for treatment, absorption, and filtration and includes trenches, seepage beds, at-grade systems, and mound systems.

29. "System" means an onsite wastewater treatment system employing a septic tank and the soil treatment systems commonly known as seepage beds, trenches, at-grade systems, or mound systems.

30. "Trench" means an excavation with a width of three feet [0.9144 meters] or less containing distribution media and one lateral.

31. "Vertical separation" means the vertical measurement of unsaturated soil or sand between the bottom of the distribution medium and the limiting factor.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-04. Installer licensing requirements.

1. A person wishing to engage in the business of installing systems shall submit an application for a license to the department on a form provided by the department. A business employing more than one person is required to have at least one licensed individual.

2. An applicant shall provide the following information to the department:

   a. The full name and physical business address of the applicant;

   b. The mailing address of the applicant, if different from the physical address;

   c. A copy of a training certificate that meets the requirements of section 33.1-21-01-05; and

   d. The applicant's social security number in accordance with North Dakota Century Code chapter 43-50.

3. An installer may apply for a soil assessment endorsement by providing a certificate that meets the requirements of subsection 4 of section 33.1-21-01-05.

4. A license expires on December thirty-first of each year. An installer is not licensed to operate until the renewal license application is approved by the department.

5. An applicant shall pay a license fee of two hundred dollars to the department at the time the license application is submitted. An applicant shall pay an additional fee of fifty dollars for a soil assessment endorsement. A license may not be issued prior to payment of the appropriate fee.

6. The department shall review each installer application. If additional information is required, the department shall notify the applicant within thirty days of the department receiving the application, and processing must be postponed until the application is complete. The

department shall review the completed application and either issue or deny a license within thirty days after the completed application is received.

7. An individual installing a system on the individual's premises is exempt from the requirements of this section. The individual shall obtain a permit for the system in accordance with section 33.1-21-01-06.

8. An installer license is not transferable.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-03, 23.1-07.1-06

33.1-21-01-05. Training requirements.

1. An installer licensed prior to October 1, 2026, shall provide documentation of a minimum of six hours of training prior to renewing the installer's license for the first time under the new rules.

2. A new installer shall provide documentation of eighteen hours of training approved by the department prior to obtaining a license.

3. An installer renewing the installer's license after December 31, 2027, shall provide documentation of ten hours of training approved by the department in a consecutive three-year period.

4. An installer applying for a soil assessment endorsement shall provide documentation of a minimum of six hours of training approved by the department as well as a certificate showing a passing evaluation.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-03

33.1-21-01-06. Permits required.

1. A person may not construct, alter, repair, or extend any system without first obtaining a permit from the permitting authority. Regular system maintenance does not require a permit.

2. The permit must be issued by the permitting authority within the jurisdictional limits where the work is being done. The fee for the permit must be set by the permitting authority. The permitting authority shall maintain records of all permits it has issued for the life of the system.

3. A permit may not be issued without a valid installer license with the exception of an individual installing a system on the individual's own premises in accordance with subsection 7 of section 33.1-21-01-04.

4. Any permit is valid for no more than twelve months from date of issuance.

5. The permitting authority may deny a permit for the construction of a system if a public sewer system is available within two hundred feet [60.96 meters] of the property line unless written documentation indicates denial of connection from the sewer authority.

6. For any system or facility with wastewater flows of two thousand five hundred gallons [9463.53 liters] per day or greater, plans and specifications must be prepared by a North Dakota-registered professional engineer, as defined in North Dakota Century Code chapter 43-19, and submitted to the department's division of municipal facilities for review and approval. Construction of such systems may not commence until approval is granted by the division.

7. A system using a class V underground waste disposal injection well (i.e. drainfield) serving twenty or more persons must complete a shallow disposal system form and submit it to the department.

8. Permit approval, modification, denial, or revocation must be done in writing.

9. Permit conditions that vary from the provisions of this chapter must be related to a request for variance in accordance with section 33.1-21-01-15.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-07. General requirements.

1. The minimum lot size in which a new system may be installed is one acre [.405 hectares].

2. A system must be installed in original natural soil. Unsuitable soils include compacted fill or scraped areas.

3. Water carried from bathrooms, kitchens, laundry fixtures, and other household plumbing must pass through a septic tank or higher level of treatment prior to its discharge into the soil. If underground dispersal for treatment is not feasible, the permitting authority may review alternative methods of collection and disposal.

4. Culinary wastewater from commercial kitchens must pass through a properly sized and serviced grease interceptor.

5. If a septic tank is abandoned, the permitting authority must be notified, and the tank must be pumped by a septic system servicer, as defined in North Dakota Century Code chapter 61-28, and either:

   a. Removed and properly disposed;

   b. Crushed and backfilled with soil, sand, or gravel; or

   c. Filled with an inert flowable fill and capped.

6. A system must be constructed of durable materials resistant to acid, corrosion, or decay.

7. Any materials utilized in a system must be installed in accordance with manufacturer requirements.

8. A buried system component, including the septic tank, must be protected against flotation under high water table conditions. This must be achieved by weight of the component, earth anchors, or shallow bury depths.

9. Materials other than specified in this chapter must be approved by the permitting authority.

10. A system utilizing power must have an alarm system installed for pump failure.

11. Electrical components must be installed according to manufacturer specifications.

12. All preliminary evaluation reports for proposed sites for the soil treatment area must include, at minimum, the following information:

    a. Latitude and longitude in decimal degrees;

    b. Depth to the seasonal high water table, bedrock, and other limiting conditions;

c. Soil assessment in accordance with section 33.1-21-01-09;

d. Slope;

e. The existence of lowlands, depressions, and rock outcrops;

f. Surface water drainage patterns;

g. Building location and type being served by the system;

h. Water supply source and location;

i. Easements;

j. Floodplain status; and

k. All legal setback requirements in table I, which must be described or illustrated.

13. a. Part of a system may not be installed in the floodway.

b. The soil treatment area must be located on the highest feasible area of the lot.

c. If a pumping station is used to move effluent from the septic tank to the soil treatment area, provisions must be made to prevent the pump from operating if inundated with floodwaters.

d. If the water level rises above the top of the septic tank, the tank must be pumped to remove all solids and liquids after the flood has receded before the use of the system is resumed.

14. Minimum setback distances are given in table I.

Table I
Minimum Setback Distances

Feature	**Wastewater Tanks (Feet)**	**Soil Treatment Area and Distribution Device (Feet)**
Well < 100 feet deep	100	100
Well > 100 feet deep	50	50
Any other water supply well or buried water suction pipe	50	50
Buried pipe distributing water under pressure	10	10
Surface water bodies - from ordinary high water mark	100	100
Buildings	10	20
Property lines	10	10

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-08. General prohibitions.

1. A permit may not be issued for a system that exceeds the capacity to properly absorb effluent in the quantities and by the means provided in this chapter. The permitting authority may review alternative disposal methods for a property that does not have the capacity to properly absorb effluent.

2. Water from building footings, sump pumps, drain tile, pools or pool filters, hot tubs, backwash from water treatment devices, or garage or shop drains may not enter the system. Other nondomestic wastewaters, such as industrial wastewater, may not enter the system.

3. Surface and storm water may not be directed toward any soil treatment area.

4. Wastewater may not be disposed of in any manner that may create a nuisance or cause a system to malfunction or fail.

5. A soil treatment area may not be installed during wet conditions or other conditions by which the soil may become smeared during construction as defined by the plastic limit test.

6. A system may not be installed if the ground is frozen. The ground is considered frozen if the frost penetrates the top six inches [15.24 centimeters] of soil.

7. A system, or its parts, may not be located on any parcel of land other than the parcel of land where the dwelling or building serviced by the system is located, except where a permanent easement is recorded or a centralized treatment system is utilized.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-09. Procedures for soil determination.

1. Soils must be assessed by either:

   a. A registered professional soil classifier, as defined in North Dakota Century Code chapter 43-36;

   b. A licensed installer with a soil assessment endorsement; or

   c. The permitting authority or authorized representative of the permitting authority in accordance with paragraph 3 of subdivision c of subsection 2 of North Dakota Century Code section 23-35-02.

2. a. A minimum of one soil exploration pit or boring must be excavated in the location of the proposed soil treatment system to allow the evaluation of the soil.

   b. The minimum depth of the soil boring or excavation must be to any limiting layer, ground water condition, or four feet [1.22 meters] below the infiltrative surface of the in-situ soil, whichever is encountered first.

   c. A soil description must be recorded by depth and notations made where texture, structure, and color changes occur.

   d. Measurements must be made to determine the depth to the limiting factor. This includes the highest notable water table by recording the first occurrence of redoximorphic features observed in the soil boring or excavation as well as identifying active redoximorphic features, if present.

3. If a percolation test is determined necessary to obtain additional information regarding soil permeability, the following procedures must be followed:

a. Each test hole must be six inches [15.24 centimeters] to eight inches [20.32 centimeters] in diameter, have vertical sides, and be bored or dug to the depth of the bottom of the proposed individual system.

b. The bottom and sides of the hole must be scratched carefully to remove any smearing and to provide a natural soil surface into which water may penetrate. Remove all loose material from the bottom of the hole. Add two inches [5.08 centimeters] of clean rock or sand in a mesh bag to protect the bottom.

c. The hole must be filled carefully with clear water to a minimum depth of twelve inches [30.48 centimeters] over the soil at the bottom of the test hole and maintained for no less than four hours and preferably overnight. The soil then must be allowed to swell for at least sixteen hours, but no more than thirty hours. In sandy soils, the saturation and swelling procedure is not required, and the test may proceed if water in the hole has seeped away in less than ten minutes.

d. Measure the percolation rate as follows:

(1) In sandy soils, adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level must be measured in inches to the nearest one-eighth inch [0.32 centimeters] at approximately ten minute intervals. A measurement also may be made by determining the time it takes for the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point. If eight inches [20.32 centimeters] of water seeps away in less than ten minutes, a shorter interval between measurements must be used, but in no case may the water depth exceed eight inches [20.32 centimeters]. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent; or

(2) In other soils, adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level must be measured in inches to the nearest one-eighth inch [0.32 centimeters] at approximately thirty-minute intervals, refilling between measurements to maintain an eight inch [20.32 centimeter] starting head. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent. The percolation rate also may be made by observing the time it takes the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point if a constant water depth of at least eight inches [20.32 centimeters] has been maintained for at least four hours prior to the measurement.

e. Calculate the percolation rate as follows:

(1) Divide the time interval by the drop in water level to obtain the percolation rate in minutes per inch; and

(2) Average the percolation rates determined for each test hole to determine the final soil treatment system design.

f. Report the percolation rate. Worksheets showing all calculations and measurements must be submitted.

g. A percolation test may not be performed while frost exists below the depth of the proposed soil treatment system.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-10. Design flows.

Estimates of wastewater flow are given in table II. Design flows are additive based on all proposed types of occupancy at full capacity.

Table II
Wastewater Flows

TYPE OF OCCUPANCY	**MINIMUM GALLONS PER DAY**
AIRPORTS	
Per employee	15
Per passenger	5
BOWLING ALLEYS	
Without bar or food, per lane	75
With bar only, per lane	125
With bar and food, per lane	200
CAMPS, CAMPGROUNDS, AND TRAVEL TRAILER/RV PARKS	
Without water hook-up, per space	75
With water and sewer hook-up, per space	100
With central comfort station, per person	35
With flush toilets but no showers, per person	25
Dump station facility, per site served by dump station	63
Day camp, per person (add flow for meals, showers, or pools)	15
Picnic parks with toilets only, per parking space	20
Summer and seasonal camps, per person	50
Construction at semipermanent camps	50
CHURCH AND ASSEMBLY HALLS	
Per employee	15
Per seat	5
With kitchen waste, per seat	7
Country clubs, per member present	25
Dance halls, per person	5
DWELLINGS	
Boardinghouses, per person	50
Multiple-family dwellings, per person (apartments or condominiums)	60
Rooming houses, per person	40
Single-family dwellings, per bedroom (minimum of 2 bedrooms)	150
Mobile home parks, per lot	300
FACTORY OR MANUFACTURING PLANT	
Without showers, per employee	25
With showers, per employee	35
With cafeteria, per employee	5
FAIRGROUNDS	

TYPE OF OCCUPANCY	MINIMUM GALLONS PER DAY
Per employee	15
Per person	5
FOOD AND BEVERAGE SERVICE FACILITIES	
Per employee	15
Bar, per seat	5
Grocery store, per square foot	0.4
Restaurants: toilet waste, per customer	6
Restaurants: with kitchen waste, per meal	2unless
Restaurants: with kitchen waste disposable service, per meal	1
Restaurants: with garbage disposal, per meal	2
Restaurants: with cocktail lounge, per customer	5
Restaurants: less than 24-hour operation, per seat	50
Restaurants: 24-hour operation or fast food, per seat	75
Restaurants: on interstate or major highway, per seat	100
HOTEL/MOTEL/BED AND BREAKFAST	
Per employee	15
Per unit, no food, no kitchen	125
Per unit, with food or kitchen in room	200
Bed and breakfast, per bedroom	150
LAUNDRIES	
Per machine	500
MEDICAL OR INSTITUTIONAL FACILITIES	
Per employee	15
Dental office: continuous water, per chair	250
Dental office: demand water, per chair	100
Doctors' office, per square foot	0.62
Hospitals, per bed	250
Hospitals: kitchen waste only per bed	40
Hospitals: laundry waste only per bed	60
Institutions, per person	125
Nursing home, per person	125
Prison or jail, per person	125
Rest home, per person	500
REST AREAS OR WELCOME CENTERS	
Per person	5
SCHOOLS	
Without food or showers, per student or employee	15
Add for food, per student or employee	5
Add for showers, per student or employee	10
Boarding, per student or employee	75
Day care without meals, per student or employee	15
SERVICE STATION	
With toilets for first bay	1000

TYPE OF OCCUPANCY	MINIMUM GALLONS PER DAY
With toilets for each additional bay	500
STORES	
Per employee	15
With public restrooms, per 10 square feet of floor space	1
SWIMMING POOLS	
Per employee	15
Per person	10
THEATERS AND AUDITORIUMS	
Per employee	15
Per seat	5
With drive-in, per space	10

Note that discharges from nondomestic sources such as process waste, industrial waste, microbreweries, dog kennels, and horse barns are not addressed in this chapter. Such discharges must be registered as a class V injection well.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-11. Design and construction requirements for septic tanks.

The minimum design and construction requirements for septic tanks are as follows:

1. Septic tanks must:

   a. Be made from concrete, plastic, or fiberglass. Regardless of material or method of construction, the tank must be watertight and structurally sound.

   b. Be designed and constructed to withstand all lateral earth pressures under saturated soil conditions while the tank is empty.

   c. Be designed and constructed to withstand the pressure of saturated earth cover above the tank top.

   d. Be insulated if soil cover is less than two feet [0.61 meters].

   e. Be accessible for the removal of liquids and accumulated solids.

   f. Be placed on firm and settled soil capable of bearing the weight of the tank and its contents.

   g. Meet setback requirements. See table I in section 33.1-21-01-07.

   h. Have an effluent filter installed on the outlet of the tank closest to the pump chamber or soil treatment area where an ejector pump, grinder pump, garbage disposal, or nonclog pump is proposed for use prior to the septic tank. For other establishments and for dwellings utilizing a pressurized soil treatment area, an effluent filter must be installed on the outlet of the last tank, closest to the pump chamber or soil treatment area.

2. a. The liquid capacity of a septic tank must be determined by multiplying the design flow by two, and must have a minimum of one thousand gallons [3785.41 liters]. See section 33.1-21-01-10.

b. Pump chamber capacity may not be included in the sizing for septic tank liquid capacity.

c. If wastewater is pumped from an ejector or grinder pump or a garbage disposal is anticipated or installed, the septic tank capacity for single-family dwellings must be at least fifty percent greater than required in section 33.1-21-01-10.

3. a. The liquid depth of any septic tank, or its compartment, must be between thirty inches [76.2 centimeters] and six and a half feet [1.98 meters].

b. The minimum dimension or diameter of septic tanks must be four feet [1.22 meters]. The minimum dimension of any interior compartment must be two feet [0.61 meters].

c. The inlet and outlet on all tanks or tank compartments must be provided with open-ended sanitary tees or baffles and constructed to distribute flow and retain scum in the tank or compartments. Inlets may not restrict the movement of solids.

d. Sanitary tees and baffles must be permanently and securely attached to the tank.

e. Sanitary tees used as baffles must be at least four inches [10.16 centimeters] in diameter. Nonsanitary tee constructed inlet baffles must be no less than six inches [15.24 centimeters] or no more than twelve inches [30.48 centimeters] measured from the end of the inlet pipe to the nearest point on the baffle. Nonsanitary tee, filter, or screen outlet baffles must be six inches [15.24 centimeters] measured from the beginning of the outlet pipe to nearest point on the baffle.

f. The space in the tank between the liquid surface and the top of the tees or baffles must be a minimum distance of six inches [15.24 centimeters] or one hundred gallons [378.54 liters], whichever is greater.

g. The inlet tees or baffles must extend below the liquid level at least six inches [15.24 centimeters], but not more than twenty percent of the total liquid depth below the liquid surface. Inlet baffle depth must be measured vertically from the inlet pipe invert. Inlet baffles must be at least one inch [2.54 centimeters] above the crown of the inlet sewer.

h. The outlet tees or baffles must extend below the liquid surface a distance equal to forty percent of the liquid depth, except horizontal cylindrical tanks' penetration of tees or baffles must be thirty-five percent of the total liquid depth. Outlet baffles must be measured vertically from the outlet pipe invert.

i. There must be at least one inch [2.54 centimeters] between the underside of the top of the tank and the highest point of the inlet and outlet devices.

j. The inlet invert may not be less than two inches [5.08 centimeters] above the outlet invert.

k. The inlet and outlet must be located opposite each other along with the axis of maximum dimension. The horizontal distance between the nearest points of the inlet and outlet devices must be at least four feet [1.22 meters].

4. Access to the septic tank must:

a. Have one or more manholes, with a minimum dimension of twenty inches [50.8 centimeters] and be located within six feet [1.83 meters] of all walls of the tank. All manhole covers must be a minimum of six inches [15.24 centimeters] above the finished grade.

b. Have an inspection pipe of at least four inches [10.16 centimeters] in diameter or a manhole over each inlet, outlet, and baffled wall. The inspection pipe must be accessible.

c. Have covers safely secured to prevent unauthorized access. Septic tanks installed after October 1, 2026, must have secondary fall protection.

5. a. Septic tanks larger than three thousand gallons [11356.24 liters] and fabricated as a single unit must be divided into two or more compartments.

b. If a septic tank is divided into two compartments, not less than one-half or more than two-thirds of the total volume must be in the first compartment.

c. If a septic tank is divided into three or more compartments, one-half of the total volume must be in the first compartment and the other half equally divided in the other compartments.

d. Connections between compartments must be installed in a manner to effectively retain scum and sludge. Tees or baffles between compartments must extend below the liquid surface, a distance equal to forty percent of the liquid depth, except horizontal cylindrical tanks' penetration of tees or baffles must be thirty-five percent of the total liquid depth.

e. Adequate venting must be provided between compartments by baffles or by an opening of at least fifty square inches [322.58 square centimeters] near the top of the compartment walls.

f. Adequate access to each compartment must be provided by one or more manholes.

6. If more than one tank is used to obtain the required liquid volume, the tanks must:

a. Be connected in series.

b. Comply with all other provisions of this chapter.

c. Obtain the required liquid volume with a maximum of four tanks.

d. Be of equal or lesser size than the first tank in the series.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-12. Piping, distribution, and dosing of wastewater effluent.

1. a. The supply pipe extending from the building to septic tanks to the undisturbed soil beyond the tank excavation must:

(1) Meet the strength requirements of schedule 40 pipe, contained in the ASTM International Standard D1785;

(2) Be made from materials resistant to breakdown from wastewater and soil;

(3) Be watertight, including all joints;

(4) Be durable throughout the design life;

(5) Be protected from deflecting, buckling, crushing, or longitudinally bending by ensuring the soil is sufficiently compacted underneath the pipe or placed on undisturbed soil;

(6) Be resistant to pressures, fatigue, and strain for the application;

(7) Be installed according to ASTM International Standard D2321;

(8) Be designed, installed, and protected to minimize the danger of freezing in the pipe;

(9) Have access for cleanouts; and

(10) Be more than six inches [15.24 centimeters] from final grade. Pipes susceptible to freezing must be insulated and meet applicable setback requirements in section 33.1-21-01-13.

b. Gravity supply pipes must have minimum slope of one percent. Pipe restraints must be used for slopes greater than twenty percent or if fluid velocities in the pipe exceed fifteen feet per second [4.57 meters per second].

c. Pressure supply pipes must have a minimum slope of one percent for drainback, or other frost protection must be employed.

2. a. The outlet pipe extending from the septic tank or dosing chamber to the undisturbed soil beyond the tank must:

(1) Meet the strength requirements of schedule 40 pipe, contained in the ASTM International Standard D1785; and

(2) Be supported in a manner not allowing deflection during the backfilling and subsequent settling of the soil between the edge of the septic tank and the edge of the excavation.

b. The soil around the pipe extending from the septic tank must be compacted to original density for a distance of three feet [91.44 centimeters] beyond the edge of the tank excavation.

3. a. Serial distribution must be used to distribute wastewater effluent to individual trenches in a soil treatment area. Serial distribution may not create a pressure head on trenches at lower elevations. Either drop boxes or distribution boxes are required. If the necessary elevation differences between trenches for serial distribution are unachievable, parallel distribution must be used.

b. Drop boxes used for serial distribution must:

(1) Be watertight;

(2) Be covered by a minimum of six inches [15.24 centimeters] of soil and be accessible;

(3) Have the invert of the inlet supply pipe at least one inch [2.54 centimeters] higher than the invert of the outlet supply pipe to the next drop box;

(4) Have the invert of the outlet supply pipe to the next drop box no greater than two inches [5.08 centimeters] higher than the crown of the distribution pipe serving the trench in which the box is located;

(5) Have a discharge rate into the drop box allowing wastewater to enter the system without surfacing. If wastewater effluent is delivered to the drop box by pump, the pump discharge must be directed against a wall or side of the box on which there is no outlet or directed against a deflection wall, baffle, or other energy dissipater. The supply pipe must drain after the pump shuts off; and

(6) Be placed on firm and settled soil.

c. Distribution boxes must:

(1) Be watertight;

(2) Be covered by a minimum of six inches [15.24 centimeters] of soil and be accessible;

(3) Have the invert and all outlets set and maintained at the same elevation set with speed levelers;

(4) Have the inlet invert either:

(a) One inch [2.54 centimeters] above the outlet invert; or

(b) Sloped such that an equivalent elevation above the outlet invert is obtained within the last eight feet [2.44 meters] of the inlet pipe;

(5) Have each trench line connected separately to the distribution box and must not be subdivided. Distribution boxes must not be connected to one another if each box has distribution pipes; and

(6) Have a baffle wall installed or the pump discharge directed against a wall, baffle, other energy dissipater, or side of the box on which there is no outlet. The baffle must be secured to the box and extend at least one inch [2.54 centimeters] above the crown of the inlet pipe. The discharge rate into the distribution box may not result in surfacing of wastewater from the box. Pressure may not build up in the box during pump discharge.

d. Nonpressurized distribution pipes must:

(1) Be at least four inches [10.16 centimeters] in diameter;

(2) Have at least one row of holes of no less than one-half inch [1.27 centimeters] in diameter spaced no more than thirty-six inches [91.44 centimeters] apart;

(3) Be laid level and oriented away from the distribution device;

(4) Have a load bearing capacity of not less than one thousand pounds per linear foot [1488.16 kilograms per meter]; and

(5) Have uniformly spaced distribution pipes in beds no more than five feet [1.52 meters] apart and not more than thirty inches [76.2 centimeters] from the side walls of the bed.

4. a. Pressure distribution pipes and associated fittings must be properly joined together and withstand a pressure of at least forty pounds per square inch [2.76 bars].

b. The distribution network must be designed so there is less than ten percent variance in flow for all perforations. Perforations must be no smaller than one-eighth-inch [0.32-centimeter] diameter and no larger than one-fourth-inch [0.64-centimeter] diameter.

c. Perforation holes must be drilled straight into the pipe and not at an angle. Pressurized distribution laterals must be installed level. Perforation holes must be free of burrs. The pipes must drain after the pump turns off.

d. The pressure distribution pipes in beds must be uniformly spaced no more than thirty-six inches [91.44 centimeters] apart and not more than twenty-four inches [60.96 centimeters] from the outside edge of the bed or mound.

e. Pressure distribution pipes must be connected to a header or manifold pipe that is of a diameter such that the friction loss in the header or manifold is not greater than five percent of the average head at the perforations. The header or manifold pipe must be connected to the supply pipe from the pump.

f. Perforated pressure distribution pipes may not be installed closer than twelve inches [30.48 centimeters] from the edge of the absorption bed and must terminate no closer than twelve inches [30.48 centimeters] from the ends of the absorption bed.

g. Pressure distribution pipe cleanouts must be provided to check the system for proper operation and cleaning of plugged perforations. Cleanouts must be accessible from final grade.

5. a. The pump controls and pump discharge line must be installed to allow access for servicing or replacement without entering the dosing chamber. The pump discharge line requires a pressure-rated fitting (threaded union or cam lock).

b. The dosing chamber must:

(1) Be watertight and constructed of concrete, plastic, or fiberglass;

(2) Have one or more manholes, with a minimum diameter of twenty inches [50.8 centimeters]. Manhole covers must be brought six inches [15.24 centimeters] above the finished grade;

(3) Have covers safely secured to prevent unauthorized access;

(4) Have a minimum total capacity of one hundred percent of the design flow or include an alternating two-pump system; and

(5) Have a net capacity to dose sixty to seventy-five percent of the total volume of the absorption lines at one time.

c. Pumps for gravity distribution must:

(1) Have a discharge rate between ten gallons [37.85 liters] and forty-five gallons [170.34 liters] per minute; and

(2) Have sufficient dynamic head for both the elevation difference and friction loss.

d. Pumps for pressure distribution must:

(1) Have a discharge capacity based on perforation discharges for a minimum average head of:

(a) For dwellings: one foot [0.30 meters] for three-sixteenth-inch [0.48-centimeter] to one-fourth-inch [0.64-centimeter] perforations and two feet [0.61 meters] for one-eighth-inch [0.32-centimeter] perforations.

(b) For other establishments: two feet [0.61 meters] for three-sixteenths-inch [0.48-centimeter] to one-fourth-inch [0.32-centimeter] perforations and five feet [1.52 meters] for one-eighth-inch [0.32-centimeter] perforations.

Perforation discharge is determined by the following formula:

$Q=19.65cd^2h^{1/2}$
Where Q = discharge in gallons per minute
c = 0.60 = coefficient of discharge
d = perforation diameter in inches
h = head in feet

(2) Have discharge head at least five feet [1.52 meters] greater than the head required to overcome pipe friction losses and the elevation difference between the pump and the distribution device.

(3) Maintain a quantity of wastewater effluent for each pump cycle at a minimum of four times the volume of the distribution pipes plus the volume of the supply pipe but no greater than twenty-five percent of the design flow.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-13. Soil treatment area.

1. a. The size of the soil treatment area must be determined using the design wastewater flow rates from section 33.1-21-01-10 and soil conditions. Soil treatment area is calculated by dividing the daily design flow by the soil loading rate.

b. The systems absorption area and mound absorption ratio must be sized in accordance with table III using the United States department of agriculture (USDA) soil texture and structure or percolation rate:

Table III
Loading Rates

USDA Soil Texture	**USDA Soil Structure Type and Grade**	**Percolation Rate of Original Soil (Minutes Per Inch)**	**Loading Rate (Gallons Per Day/ Square Foot)**	**Absorption Ratio (Square Feet Per Gallon/Day)**
Sand, coarse sand, loamy sand, loamy coarse sand, fine sand, very fine sand, loamy fine sand, loamy very fine sand, 35 to 50% rock fragments	Single grain, granular, blocky, or prismatic structure; weak grade	< 0.1*	*	*
Sand, coarse sand, loamy sand, loamy coarse sand, < 35% rock fragments	Single grain, granular, blocky, or prismatic structure; weak grade	0.1 - 5	1.20	1.0
Fine sand, very	Single grain,	0.1 - 5	0.6	2.0

USDA Soil Texture	USDA Soil Structure Type and Grade	Percolation Rate of Original Soil (Minutes Per Inch)	Loading Rate (Gallons Per Day/ Square Foot)	Absorption Ratio (Square Feet Per Gallon/Day)
fine sand, loamy fine sand, loamy very fine sand, < 35% rock fragments	granular, blocky, or prismatic structure; weak grade			
Sand, sandy loam	Single grain, structureless	6 - 15	0.78	1.5
Sandy loam, loam, silt loam	Granular, blocky, or prismatic structure; moderate to strong grade	16 - 25	0.60	2.0
Sandy loam, loam, silt loam	Granular, blocky, prismatic, or massive structure; structureless to weak grade	26 - 40	0.50	2.4
Sandy clay loam, clay loam, silty clay loam	Granular, blocky, or prismatic structure; moderate to strong grade	41 - 60	0.45	2.6
Sandy clay loam, clay loam, silty clay loam	Granular, blocky, prismatic, or massive structure; structureless to weak grade	61 - 75**	0.3	5.0
Sandy clay, clay, silty clay	Granular, blocky, or prismatic structure; moderate to strong grade	76 - 90**	0.2	5.0
Sandy clay, clay, silty clay	Granular, blocky, prismatic, or massive structure; structureless to weak grade	91 - 120**	0.15	5.0
Sandy loam, loam, silt loam, sandy clay loam, clay loam, silty clay loam, sandy clay, clay, silty clay	Platy structure; weak to strong grade	> 120***	***	***

*Soil is unsuitable for a system if percolation rate is less than 0.1 minutes per inch.
**Consider at-grade or mound for soils with this percolation range.
***Soil is unsuitable for a system if percolation rate is greater than 120 minutes per inch.

2. a. The soil and limiting factors must determine the type of soil treatment area. See section 33.1-21-01-09 for soil assessment and percolation test procedures.

b. The soil loading rate must be determined by the soil between the bottom of the soil treatment area and the bottom of the soil boring or excavation, using the most restrictive layer as the soil loading rate.

c. The vertical separation between the bottom of the soil treatment area and the limiting factor must be at least twenty-four inches [60.96 centimeters].

d. If installed in sand, loamy sand, or soils with a percolation rate of one-tenth of a minute to five minutes per inch, trenches and seepage beds must employ one or more of the following measures:

(1) Pressure distribution; or

(2) Vertical separation distance of at least five feet [1.52 meters].

e. Excessive overland surface flow must be diverted from the soil treatment area.

f. The soil profile on slopes in excess of twelve percent also must be assessed downslope of the proposed soil treatment system to identify the presence of layers with different permeability that may cause side hill seepage.

g. A soil treatment system may not be located within fifteen feet [4.57 meters] of layers surfacing on the down slope identified in subdivision f.

h. The bottom of the soil treatment system excavation must be level and along the contour. Sidewalls must be as vertical as practical.

i. The bottom and sides of the trench, seepage bed, or at-grade system to the top of the distribution media must be excavated in a manner to leave the soil in a natural, unsmeared, and uncompacted condition. Excavation must occur if the soil moisture content is less than or equal to the plastic limit.

j. Soil treatment systems may not have a depth greater than four feet [1.22 meters].

k. Laterals for gravity distribution may not be more than one hundred ten feet [33.53 meters] in length.

l. In slower draining loam to clay soil, excavation must be by backhoe or other means that allow the equipment wheels or tracks to remain on the surface soil. Excavation equipment or other vehicles may not be driven on the soil treatment area.

m. Distribution media in trench, seepage bed, and at-grade systems must:

(1) Have a minimum of six inches [15.24 centimeters] of sidewall depth from the bottom of the soil treatment area;

(2) Encase the distribution pipes. See section 33.1-21-01-12. If drainfield rock is utilized, the distribution pipe must be covered to a depth of at least two inches [5.08 centimeters]; and

(3) Be covered with a durable nonwoven geotextile fabric.

n. The depth of cover over the crown of distribution pipes must be between twelve inches [30.48 centimeters] and thirty-six inches [91.44 centimeters] of soil.

o. Each soil treatment area must have an inspection pipe. Inspection pipes must:

(1) Be four inches [10.16 centimeters] in diameter;

(2) Be installed at the terminal end of each lateral in a trench system and at each corner of a bed system and allow for monitoring of current water level. If an additional inspection pipe is installed in the trench, it must be located at the entrance of the trench;

(3) Have perforations located below the fabric, if used;

(4) Extend to the bottom of the infiltrative surface and may not be connected to the end of the distribution pipe; and

(5) Be secured and capped six inches [15.24 centimeters] above finished grade, or accessible below grade.

p. A minimum of six inches [15.24 centimeters] of soils suitable to grow vegetative cover must be placed over the system.

q. A close-growing vegetative cover must be established over the soil treatment and dispersal system and other vegetatively disturbed areas. Trees, shrubs, deep-rooted plants, or hydrophytic plants may not be planted on the system. The sodding, seeding, or other vegetation establishment must be initiated immediately after the placement of the topsoil borrow. If the climatic season does not allow immediate establishment of vegetation, the soil treatment and dispersal system must be protected from erosion and excessive frost and a vegetative cover must be established as soon as favorable climatic conditions exist. The vegetative cover established may not interfere with the hydraulic performance of the system and must provide adequate frost and erosion protection.

r. The contour loading rate for soil dispersal systems must be between one gallon [3.79 liters] and twelve gallons [45.42 liters] per linear foot [0.30 meters] per day.

3. Trenches:

a. Must be between eighteen inches [45.72 centimeters] and thirty-six inches [91.44 centimeters] wide with a minimum sidewall absorption height of six inches [15.24 centimeters] of natural soil. Trenches wider than thirty-six inches [91.44 centimeters] are considered a bed.

b. Must have a minimum spacing of six feet [1.83 meters] on center, unless located on a slope of more than six percent, in which case a minimum of ten feet [3.05 meters] of undisturbed earth is required between trenches.

c. Must be backfilled and crowned above finished grade to allow for settling.

4. Seepage beds must:

a. Be sized with fifty percent more square feet than trenches if utilizing gravity distribution;

b. Be limited to areas having natural slopes of less than six percent;

c. Have a maximum width of twelve feet [3.66 meters] for a gravity bed or twenty-five feet [7.62 meters] for a pressurized bed; and

d. Have a space of one-half the bed width between multiple beds.

5. a. At-grade systems must:

(1) Be installed in areas with slopes less than or equal to twenty-five percent;

(2) Have maximum absorption width of fifteen feet [4.57 meters] for beds. The bed absorption width for slopes one percent and greater does not include any width of media necessary to support the upslope side of the pipe;

(3) Be installed along the natural contour of the up slope edge of the trench or bed;

(4) Be installed using construction techniques that minimize compaction;

(5) Have twelve inches [30.48 centimeters] of soil suitable to grow vegetative cover installed over the distribution media; and

(6) Extend cover at least five feet [1.52 meters] from the ends of the media bed and be sloped no steeper than four to one, to divert surface water. Side slopes may not be steeper than four to one.

b. The sizing of the soil treatment area must be determined in accordance with table III by using the loading rate for the upper twelve inches [30.48 centimeters] of soil.

c. The ground surface where the system is to be placed must be scarified or trenched less than twelve inches [30.48 centimeters] in depth.

d. Distribution of wastewater effluent over the distribution media must be by distribution pipe under pressure. See section 33.1-21-01-12.

e. At-grade systems located on one percent slope or greater require only one distribution pipe located on the upslope edge, with the bed width being measured from the distribution pipe to the downslope edge. Multiple distribution pipes may be allowed for use to provide even distribution if necessary, based upon site conditions.

6. a. Mounds may not be located:

(1) On natural slopes exceeding twelve percent;

(2) On slopes of three percent or greater, and where the original soil is a clay, sandy clay, or silty clay soil, where the ground surface contour lines that lie directly below the long axis of the distribution bed represent a swale or draw, unless contour lines have a radius of curvature greater than one hundred feet [30.48 meters]; or

(3) In swales or draws where the radius of curvature of the contour lines is less than fifty feet [15.24 meters].

b. Mounds must be constructed on original soil and meet the separation requirement between the bottom of the distribution medium and limiting factor.

c. There must be at least twelve inches [30.48 centimeters] of original soil with a percolation rate faster than one hundred twenty minutes per inch [47.24 minutes per centimeter] above the limiting factor.

d. The sizing of the soil treatment area must be determined in accordance with table III by using the percolation rate of the twelve inches [30.48 centimeters] of original soil immediately under the clean sand layer.

(1) The distribution media bed area consists of bottom area only and must be calculated by dividing the design flow by one and one-fifth gallons per square foot [48.9 liters per square meter] per day.

(2) The soil mound absorption area is determined by multiplying the soil mound absorption length by the soil mound absorption width. The soil mound absorption

width is calculated by multiplying the mound distribution media bed width by the mound absorption ratio.

e. The required absorption width of mounds constructed on ground sloping from:

(1) Zero to one percent must include the width of the distribution bed plus a distance measured between the outer edges of the upslope and the downslope banks.

(2) One percent to twelve percent must include the width under the distribution media layer plus a portion of the width of the downslope bank.

f. Surface preparation must include:

(1) Removing all vegetation in excess of four inches [10.16 centimeters] in length and dead organic debris from the surface of the total area selected for the mound, including the area under the banks. The total area must be roughened by plowing to a depth of at least eight inches [20.32 centimeters] or the sod layer broken and roughened by backhoe teeth. This must be achieved by removing a portion of the topsoil with the plow throwing the soil upslope to provide a proper interface between the fill and natural soils.

(2) Soil scarification may occur only if the moisture content of the upper layer of soil is below the plastic limit. The soil under a mound including the area under the banks may not be roughened by rototilling or pulverizing. In soils that are sandy in the top eight-inch [20.32-centimeter] depth, discing may be used for surface preparation as a substitute for plowing. Mound construction must proceed immediately after surface preparation is completed.

g. A rubber-tired tractor may be used for plowing or discing but may not be driven on the absorption area after the surface preparation is completed. A crawler or track type tractor must be used for mound construction.

h. The side slopes on the mound may not be steeper than four to one.

i. The supply pipe from the pump to the mound area must be installed before soil surface preparation. The trench must be backfilled and compacted to prevent seepage of wastewater effluent.

j. (1) A minimum of twelve inches [30.48 centimeters] clean sand must be placed in contact with the bottom area of the distribution media layer area and must be uniformly tapered to cover the entire original soil absorption area.

(2) The clean sand must be placed by using a construction technique that minimizes compaction. At least six inches [15.24 centimeters] of clean sand must be kept beneath equipment to minimize compaction of the scarified layer.

(3) The clean sand layer upon which the distribution media is placed must be level.

(4) If using drainfield rock as the distribution medium, a depth of at least nine inches [22.86 centimeters] must be placed over the bed area below the distribution pipe.

(5) Wastewater effluent must be distributed over the entire distribution media area by a pipe under pressure.

(6) The width of the distribution media layer in a single mound may not exceed ten feet [3.05 meters].

(7) Construction vehicles may not be allowed on the distribution media until backfill is placed.

(8) On slopes of three percent or greater, the long axis of the level distribution media layer may not diverge up or down the slope by more than twelve inches [30.48 centimeters] of elevation from the natural contour line. The depth of the clean sand layer along the upper edge of the level distribution media layer may not vary by more than twelve inches [30.48 centimeters].

(9) Soils suitable to grow vegetative cover must be placed on the soil treatment area to a depth of twelve inches [30.48 centimeters] in the center of the mound and to a depth of six inches [15.24 centimeters] at the sides.

k. If located on slopes, a diversion must be constructed immediately upslope from the mound to intercept and direct runoff.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-14. Inspection.

1. Inspection of the installation of a system must be conducted by the permitting authority or an authorized representative of the permitting authority in accordance with paragraph 3 of subdivision c of subsection 2 of North Dakota Century Code section 23-35-02, which requires the inspection to be conducted within one business day of receiving the request for inspection.

2. The permitting authority shall notify installers of noted deficiencies for correction for the installation of a system at the time of inspection.

3. Inspection of existing equipment and operation of a system may be made at a reasonable time by the permitting authority or an authorized representative of the permitting authority.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-15. Variance.

1. An applicant for a system permit may request a variance from the design standards in this chapter by submitting a request to the relevant permitting authority.

2. The permitting authority may grant a variance to requirements of this chapter if adequate documentation is provided to justify the need for the deviation and conditions may not cause a violation of any existing water quality standard, cause a health hazard, or create a nuisance.

3. Any variance granted for any existing nonconforming or nonfunctional system must be in accordance with subsection 2 of North Dakota Century Code section 23.1-07.1-04.

4. The permitting authority shall prepare a written decision to grant or deny a request for variance.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-04

33.1-21-01-16. Appeals.

1. All appeals and department recommendations regarding permitting authority decisions denying, modifying, or revoking a permit to install a system must be made in accordance with North Dakota Century Code section 23.1-07.1-05.

2. Appeals must be submitted on a form provided by the department, or contain the following information:

   a. Licensed installer or homeowner;

   b. Permitting authority;

   c. Date and description of the decision; and

   d. Copy of the decision.

3. The department shall respond within ten business days of receipt of an appeal.

History: Effective October 1, 2026.
General Authority: NDCC 23.1-07.1-02
Law Implemented: NDCC 23.1-07.1-05

CHAPTER 33.1-24-02

33.1-24-02-06. Requirements for recyclable materials and universal waste.

1. The~~ following~~ requirements for recyclable materials are:

   a. Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections 2 and 3, except for the materials listed in subdivisions b and c. Hazardous wastes that are recycled ~~will be~~are known as "recyclable materials".

   b. The following recyclable materials are not subject to the requirements of this section but are regulated under sections 33.1-24-05-201 through 33.1-24-05-209, 33.1-24-05-230 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, 33.1-24-05-820 through 33.1-24-05-929, and all applicable provisions in sections 33.1-24-05-250 through 33.1-24-05-299 and chapters 33.1-24-06 and 33.1-24-07:

      (1) Recyclable materials used in a manner constituting disposal. See ~~(~~sections 33.1-24-05-201 through 33.1-24-05-209~~)~~.

      (2) Hazardous wastes burned ~~(as defined in subsection 1 of section 33.1-24-05-525)~~or processed in ~~boilers and~~a boiler or industrial ~~furnaces~~furnace that are not regulated ~~under~~by sections 33.1-24-05-144 through 33.1-24-05-151 ~~(~~are regulated by sections 33.1-24-05-525 through 33.1-24-05-549~~)~~ as specified in subsection 1 of section 33.1-24-05-525.

      (3) Recyclable materials from which precious metals are reclaimed~~ (~~. See sections 33.1-24-05-230 through 33.1-4-05-234~~)~~.

      (4) Spent lead-acid batteries that are being reclaimed~~ (~~. See sections 33.1-24-05-235 through 33.1-24-05-249~~)~~.

   c. The following recyclable materials are not subject to ~~regulation under ~~chapters 33.1-24-03 through 33.1-24-07 and are not subject to notification requirements:

      (1) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of sections 33.1-24-03-50 through 33.1-24-03-55.

      (2) Scrap metal that is not excluded under subdivision m of subsection 1 of section 33.1-24-02-04.

      (3) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility, if such wastes result from normal petroleum refining, production, and transportation practices~~ (this~~. This exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, ~~when~~if such recovered oil is already excluded ~~under~~by subdivision l of subsection 1 of section 33.1-24-02-04~~)~~.

      (4) ~~Subdivision c also applies to the following:~~

         (a) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, ~~when~~if such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under section 33.1-24-05-611 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(b) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices, ~~when~~if such hazardous wastes are reintroduced into a refining process after a point in which contaminates are removed, so long as the fuel meets the used oil fuel specification under section 33.1-24-05-611; and

(c) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under section 33.1-24-05-611.

d. Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of chapters 33.1-24-01 through 33.1-24-04, and sections 33.1-24-05-01 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-1149, and subsection 5 of section 33.1-24-06-16, but is regulated under sections 33.1-24-05-600 through 33.1-24-05-689. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

e. Hazardous waste that is exported or imported for the purpose of recovery is subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-59.

2. Generators and transporters of recyclable materials are subject to the applicable requirements of chapters 33.1-24-03 and 33.1-24-04 and the notification requirements, except as provided in subsection 1.

3. Owners or operators of facilities that:

a. Store recyclable materials before they are recycled are regulated under all applicable provisions of sections 33.1-24-05-01 through 33.1-24-05-143, sections 33.1-24-05-191 through 33.1-24-05-299, sections 33.1-24-05-400 through 33.1-24-05-474, 33.1-24-05-525 through 33.1-24-05-549, sections 33.1-24-05-820 through 33.1-24-05-1149, and chapters 33.1-24-06 and 33.1-24-07 and the notification requirements, under section 33.1-24-03-03, except as provided in subsection 1. The recycling process itself is exempt from regulation except as provided in subsection 4 of section 33.1-24-02-06.

b. Recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsection 1:

(1) Notification requirements;

(2) Sections 33.1-24-05-38 and 33.1-24-05-39~~ (dealing with the use of the manifest and manifest discrepancies)~~;

(3) Subsection 4 of section 33.1-24-02-06; and

(4) The owner or operator shall complete and submit environmental protection agency form 8700-13 A/B to the regional administrator by March first of the following even-numbered year and must cover activities during the previous year.

4. Owners or operators of ~~facilities subject to the~~ hazardous waste ~~permitting requirements~~facilities permitted with hazardous waste management units that recycle

hazardous wastes are subject to the requirements of sections 33.1-24-05-400 through 33.1-24-05-449, subsection 5 of section 33.1-24-06-16, or sections 33.1-24-05-950 through 33.1-24-05-1149.

5. The following ~~listed in this subsection~~ wastes are exempt from regulation under chapters 33.1-24-03 through 33.1-24-06, except as specified in sections 33.1-24-05-700 through 33.1-24-05-799 ~~and, therefore~~ are not fully regulated as hazardous waste~~. The wastes listed in this subsection~~, and are subject to regulation under sections 33.1-24-05-700 through 33.1-24-05-799:

   a. Batteries as described in section 33.1-24-05-702;

   b. Pesticides as described in section 33.1-24-05-703;

   c. Mercury-containing equipment as described in section 33.1-24-05-704;~~ and~~

   d. Lamps as described in section 33.1-24-05-705; and

   e. Aerosol cans as described in section 33.1-24-05-706.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

CHAPTER 33.1-24-03

33.1-24-03-03. Identification number, registration certificate, and generator category determination.

1. A generator may not treat, store, dispose of, transport, or offer ~~for~~ transportation of hazardous waste without having received an identification number and a registration certificate from the department.

2. A generator shall determine its generator category. A generator's category is based on the amount of hazardous waste generated each month. This category may change from month to month~~. The procedures to determine a generator's category are listed in subdivisions a and b.~~ and is determined using the following procedures:

   a. A generator who generates either acute hazardous waste or nonacute hazardous waste in a calendar month shall determine its generator category for that month by:

      (1) Counting the total amount of acute hazardous or nonacute hazardous waste generated in the calendar month;

      (2) Subtracting from the total any amounts of waste exempt from counting as described by section 33.1-24-02-04; and

      (3) Determining the resulting generator category using table 1.

   b. A generator who generates both acute hazardous waste and nonacute hazardous waste in the same calendar month shall determine its generator category for that month by:

      (1) Separately counting the total amount of acute hazardous waste and the total amount of nonacute hazardous waste generated in the calendar month;

      (2) Subtracting from the totals any amounts of waste exempt from counting as described by section 33.1-24-02-04;

      (3) Separately determining resulting generator categories for the quantities of acute hazardous waste and nonacute hazardous waste using table 1; and

      (4) Applying the more stringent generator category to the accumulation and management of both acute hazardous waste and nonacute hazardous waste generated for that month.

Table 1. Generator Categories Based on Quantity of Waste Generated.

Quantity of Acute Hazardous Waste Generated in a Calendar Month	Quantity of Nonacute Hazardous Waste Generated in a Calendar Month	Quantity of Residues From a Cleanup of Acute Hazardous Waste Generated in a Calendar Month	Generator Category
Greater than 1 kg (2.2 lbs)	Any amount	Any amount	Large quantity generator
Any amount	Greater than or equal to 1,000 kg (2,200 lbs)	Any amount	Large quantity generator
Any amount	Any amount	Greater than 100 kg (220 lbs)	Large quantity generator

Less than or equal to 1 kg (2.2 lbs)	Between 100 kg (220 lbs) and 1,000 kg (2,200 lbs)	Less than or equal to 100 kg (220 lbs)	Small quantity generator
Less than or equal to 1 kg (2.2 lbs)	Less than or equal to 100 kg (220 lbs)	Less than or equal to 100 kg (220 lbs)	Very small quantity generator

c. ~~When making~~To make the monthly determinations required by this section, the generator shall include all hazardous waste that it generates, except hazardous waste that:

(1) Is excluded from regulation under subsections 3 through 6 of section 33.1-24-02-04, subdivision c of subsection 1 of section 33.1-24-02-06, subdivision a of subsection 1 of section 33.1-24-02-07, and subsection 7 of section 33.1-24-02-04;

(2) Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in section 33.1-24-01-04;

(3) Is a material recycled, without prior storage or accumulation, only in an onsite process, under the requirements of subdivision b of subsection 3 of section 33.1-24-02-06;

(4) Is managed as part of an episodic event in compliance with section 33.1-24-03-34;

(5) Is used oil managed under the requirements listed in 33.1-24-05-600 through 33.1-24-05-699;

(6) Is spent lead-acid batteries managed under the requirements of 33.1-24-05-235;

(7) Is universal waste managed under the requirements of 33.1-24-05-700 through 33.1-24-05-799; or

(8) Is a hazardous waste pharmaceutical, as defined in section 33.1-24-05-310, that is subject to or managed in accordance with sections 33.1-24-05-310 through 33.1-24-05-320 or is a hazardous waste pharmaceutical that is also a drug enforcement administration controlled substance and is conditionally exempt under section 33.1-24-05-316.

d. ~~When determining~~To determine the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste ~~when~~if it is removed from onsite accumulation, so long as the hazardous waste was previously counted once;

(2) Hazardous waste generated by onsite treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted ~~once~~; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been previously counted ~~once~~.

e. ~~Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes.~~ Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to section 33.1-24-03-26 even though the resultant mixture exceeds the quantity limits identified in the definition of a very small quantity generator at section 33.1-24-01-04; unless the mixture exhibits one or more of the characteristics of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14. If the mixed wastes exhibit a characteristic of hazardous waste, the mixture must be included in all hazardous waste counts for that month.

f. Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid wastes. These mixtures are subject to the following:

(1) The mixture rule in paragraph 4 of subdivision b of subsection 1 of section 33.1-24-02-03, subdivisions b and c of subsection 2 of 33.1-24-02-03, and paragraph 1 of subdivision a of subsection 7 of section 33.1-24-02-03;

(2) The prohibition of dilution rule in subsection 1 of section 33.1-24-05-252;

(3) The land disposal restriction requirements of section 33.1-24-05-280 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic;

(4) The hazardous waste determination requirements of section 33.1-24-03-02; and

(5) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly generated hazardous waste. The mixture must be included in all hazardous waste counts for that month.

g. Based on the generator category as determined under this section, the generator shall meet the applicable requirements listed in sections 33.1-24-03-26, 33.1-24-03-28, and 33.1-24-03-29.

3. A generator who has not received an identification number and a registration certificate may obtain ~~one~~them by applying to the department using environmental protection agency form 8700-12. Upon receiving the request, the department ~~will~~shall assign an identification number and issue a registration certificate to the generator.

4. A generator may not offer the generator's hazardous waste to transporters that have not received an identification number and a transporter permit, or to treatment, storage, or disposal facilities that have not received an identification number and applied for a hazardous waste permit.

5. A recognized trader ~~must~~may not arrange for import or export of hazardous waste without having received an environmental protection agency identification number from the department.

6. The department may assess and collect reasonable fees for the issuance of registration certificates.

7. A small quantity generator shall renotify the department starting in 2029 and every four years following using environmental protection agency form 8700-12. This renotification must be submitted by September first of each year in which renotifications are required.

8. A large quantity generator shall renotify the department by March first of each even-numbered year using environmental protection agency form 8700-12. A large quantity generator may submit this renotification as part of its biennial report required under section 33.1-24-03-14.

History: Effective January 1, 2019; amended effective July 1, 2020; July 1, 2021; October 1,2026.
General Authority: NDCC 23.1-04-03, 23.1-04-09
Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-09~~; S.L. 2017, ch. 199, § 19~~

33.1-24-03-14. Biennial reporting.

1. A generator who is a large quantity generator for at least one month of an odd-numbered year and ships any hazardous waste offsite to a treatment, storage, or disposal facility within the United States shall prepare and submit a single copy of a biennial report to the department by March first of each even-numbered year for the previous year. The biennial report must be submitted on department-approved forms, must cover generator activities during the previous calendar year, and must include the following information:

   a. The identification number, name, and address of the generator;

   b. The calendar year covered by the report;

   c. The identification number, name, and address for each offsite treatment, storage, or disposal facility in the United States to which waste was shipped during the reporting year;

   d. The name and identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;

   e. A description, hazardous waste number ~~(~~from chapter 33.1-24-02~~)~~, department of transportation hazard class, and quantity of each hazardous waste shipped offsite for shipments to a treatment, storage, or disposal facility within the United States. This information must be listed by identification number of each such offsite facility to which waste was shipped;

   f. A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

   g. A description of the ~~changes in volume and toxicity of~~process generating the waste ~~actually achieved during the year in comparison to the previous year to the extent such information is available for years prior to 1984~~, the physical state, and the type of hazardous waste; and

   h. The certification signed by the generator or authorized representative.

2. Any generator who treats, stores, or disposes of hazardous waste onsite ~~must~~shall submit a biennial report covering those wastes in accordance with the provisions of chapters 33.1-24-05 and 33.1-24-06.

3. Reporting for exports of hazardous waste is not required on the biennial report form. A separate annual report requirement is set forth in section 33.1-24-03-23.

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-03-26. Conditions for exemption for a very small quantity generator.

Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of chapters 33.1-24-03 through 33.1-24-07, except section 33.1-24-03-01, section 33.1-24-03-02, subsection 2 of section 33.1-24-03-03, and section 33.1-24-03-26, and the notification requirements of section 33.1-24-03-03 and the very small quantity generator may accumulate hazardous waste onsite without complying with such requirements. The conditions for exemption are as follows:

1. In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in section 33.1-24-01-04;

2. The very small quantity generator complies with the hazardous waste determination requirements of section 33.1-24-03-02;

3. If the very small quantity generator accumulates at any time greater than one kilogram [2.2 pounds] of acute hazardous waste or one hundred kilograms [220 pounds] of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 and subsection 5 of section 33.1-24-02-18, all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

   a. Such waste is held onsite for no more than ninety days beginning on the date when the accumulated wastes exceed the amounts provided above; and

   b. The conditions for exemption in section 33.1-24-03-29.

4. If the very small quantity generator accumulates at any time one thousand kilograms [2,200 pounds] or greater of nonacute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

   a. Such waste is held onsite for no more than one hundred eighty days, or two hundred seventy days, if applicable, beginning on the date when the accumulated waste ~~exceed~~exceeds the amounts provided above;

   b. The quantity of waste accumulated onsite never exceeds six thousand kilograms [13,200 pounds]; and

   c. The conditions for exemption in section 33.1-24-03-28.

5. A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in subsections 3 and 4 ~~must~~shall either treat or dispose of its hazardous waste in an onsite facility or ensure delivery to an offsite treatment, storage, or disposal facility, either of which, if located in the United States, is:

   a. Permitted under chapter 33.1-24-06, or in interim status under section 33.1-24-06-16;

   b. Authorized to manage hazardous waste by a state with a hazardous waste management program approved under title 40~~ CFR~~, Code of Federal Regulations, section 271, as amended January 3, 2018;

   c. Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to section 33.1-20-06.1;

   d. Permitted, licensed, or registered by a state to manage nonmunicipal nonhazardous waste and, if managed in a nonmunicipal nonhazardous waste disposal unit, is subject to the requirements ~~in~~under title 40~~ CFR~~, Code of Federal Regulations, sections 257.5, as amended November 28, 2016, through 257.30, as amended October 13, 2005;

   e. A facility which:

      (1) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

      (2) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

f. For universal waste managed under sections 33.1-24-05-700 through 33.1-24-05-799, a universal waste handler or destination facility subject to the requirements of those sections;

g. A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(1) The very small quantity generator and the large quantity generator are under the control of the same person as defined in section 33.1-24-01-04. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in section 33.1-24-01-04 shall not be deemed to "control" such generators.

(2) The very small quantity generator marks its container of hazardous waste with:

(a) The words "hazardous waste"; and

(b) An indication of the hazards of the contents~~ (examples~~. Examples include the applicable hazardous waste ~~characteristic (i.e.,~~characteristics of ignitable, corrosive, reactive, or toxic~~)~~; hazard communication consistent with the department of transportation requirements at title 49~~ CFR~~, Code of Federal Regulations, part 172 subpart E ~~(labeling) ~~or subpart F~~ (placarding)~~, as amended December 27, 2022; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at title 29~~ CFR~~, Code of Federal Regulations, 1910.1200, as amended February 13, 2026; or a chemical hazard label consistent with the National Fire Protection Association Code 704~~)~~, 2027 edition;

h. For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of subsection 10 of section 33.1-24-02-04.

i. A reverse distributor, as defined in section 33.1-24-05-310, if the hazardous waste pharmaceutical is a potentially creditable hazardous waste pharmaceutical generated by a health care facility, as defined in section 33.1-24-05-310.

j. A health care facility, as defined in section 33.1-24-05-310, which meets the conditions in subsection 12 of section 33.1-24-05-312 and subsection 2 of section 33.1-24-05-313 as applicable, to accept noncreditable hazardous waste pharmaceuticals from an offsite health care facility that is a very small quantity generator.

6. The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

7. A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with subsection 2 of section 33.1-24-03-34.

History: Effective July 1, 2020; amended effective July 1, 2021; October 1, 2026.
General Authority: NDCC 23.1-04-03
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-03-29. Conditions for exemption for a large quantity generator that accumulates hazardous waste.

A large quantity generator may accumulate hazardous waste onsite without a permit or interim status, and without complying with the requirements of sections 33.1-24-05-01 through 33.1-24-05-249, sections 33.1-24-05-300 through 33.1-24-05-599, chapter 33.1-24-06, and chapter 33.1-24-07, provided that all of the following conditions for exemption are met:

1. ~~**Accumulation.**~~ A large quantity generator ~~accumulates~~shall accumulate hazardous waste onsite for no more than ninety days, unless in compliance with the accumulation time limit extension in subsection 2 or F006 accumulation conditions for exemption in subsection 3. The following accumulation conditions also apply:

   a. ~~**Accumulation of hazardous waste in containers.**~~ If the hazardous waste is placed in containers, the large quantity generator ~~must~~shall comply with the following:

      (1) ~~**Air emission standards.**~~ The applicable requirements of sections 33.1-24-05-400 through 33.1-24-05-474;

      (2) ~~**Condition of containers.**~~ If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator ~~must~~ immediately shall transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;

      (3) ~~**Compatibility of waste with container.**~~ The large quantity generator ~~must~~shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

      (4) ~~**Management of containers.**~~

         (a) A container holding hazardous waste always must be closed during accumulation, except ~~when~~if it is necessary to add or remove waste.

         (b) A container holding hazardous waste may not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

      (5) ~~**Inspections.**~~ At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph 2 of subdivision a of subsection 1 ~~of section 33.1-24-03-29 of this section~~ for remedial action required if deterioration or leaks are detected.

      (6) ~~**Special conditions for accumulation of ignitable and reactive wastes.**~~

         (a) Containers holding ignitable or reactive waste must be located at least fifteen meters [50 feet] from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval must be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

         (b) The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction, including the following: ~~Open~~open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition ~~(e.g., from heat-producing chemical reactions)~~, and radiant heat. ~~While~~If ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. "No Smoking" signs must be ~~conspicuously~~ placed conspicuously wherever there is a hazard from ignitable or reactive waste.

(7) ~~**Special conditions for accumulation of incompatible wastes.**~~

(a) Incompatible wastes, or incompatible wastes and materials, ~~(see~~including those listed in appendix III of chapter 33.1-24-05 ~~for examples)~~, may ~~not~~ be placed in the same container~~, unless~~ only if the requirements detailed in subsection 2 of section 33.1-24-05-08 ~~is~~are complied with.

(b) Hazardous waste may ~~not~~ be placed in an unwashed container that previously held an incompatible waste or material, ~~(~~see appendix III of chapter 33.1-24-05 ~~for examples)~~, only if the requirements of subsection 2 of section 33.1-24-05-08 ~~is complied with~~are met.

(c) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

b. ~~**Accumulation of hazardous waste in tanks.**~~ If the waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of sections 33.1-24-05-103 through subsection 3 of section 33.1-24-05-110 ~~of closure and postclosure care and~~, section 33.1-24-05-113 ~~- Waste analysis and trial tests~~, ~~as well as~~and the applicable requirements of sections 33.1-24-05-400 through 33.1-24-05-474.

c. ~~**Accumulation of hazardous waste on drip pads.**~~ If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following:

(1) The applicable drip pad requirements of sections 33.1-24-05-501 through 33.1-24-05-524;

(2) The large quantity generator shall remove all wastes from the drip pad at least once every ninety days. Any hazardous wastes that are removed from the drip pad are then subject to the ninety-day accumulation limit in subsection 1 of this section and section 33.1-24-03-27, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and

(3) The large quantity generator shall maintain onsite at the facility the following records readily available for inspection:

(a) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and

(b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

d. ~~**Accumulation of hazardous waste in containment buildings.**~~ If the waste is placed in containment buildings, the large quantity generator shall comply with sections 33.1-24-05-475 through 33.1-24-05-500. The generator shall label its containment building with the words "hazardous waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons onsite, and also in a conspicuous place provide an indication of the hazards of the contents ~~(examples~~. Examples include the applicable hazardous waste ~~characteristic (i.e.,~~characteristics of ignitable, corrosive, reactive, or toxic~~)~~; hazard communication consistent with the department of transportation requirements at title 49~~ CFR~~, Code of Federal Regulations, part 172 subpart E~~ (labeling)~~ or subpart F~~ (placarding)~~, as amended December 27, 2022; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at title 29~~ CFR~~, Code of Federal Regulations, 1910.1200, as amended February 13, 2026; or a chemical hazard label consistent with the National Fire Protection Association Code 704~~)~~, 2027 edition. The generator ~~must~~ also shall maintain:

(1) The professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476. This certification must be in the generator's files prior to operation of the unit; and

(2) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(a) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the ninety-day limit, and documentation that the procedures are complied with; or

(b) Documentation that the unit is emptied at least once every ninety days.

(c) Inventory logs or records with the above information must be maintained onsite and readily available for inspection.

e. ~~**Labeling and marking of containers and tanks.**~~

(1) ~~**Containers.**~~ A large quantity generator shall mark or label its containers with the following:

(a) The words "hazardous waste";

(b) An indication of the hazards of the contents~~ (examples~~. Examples include the applicable hazardous waste ~~characteristic (i.e.,~~characteristics of ignitable, corrosive, reactive, or toxic~~)~~; hazard communication consistent with the department of transportation requirements at title 49~~ CFR~~, Code of Federal Regulations, part 172 subpart E~~ (labeling)~~ or subpart F~~ (placarding)~~, as amended December 27, 2022; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at title 29~~ CFR~~, Code of Federal Regulations, 1910.1200, as amended February 13, 2026; or a chemical hazard label consistent with the National Fire Protection Association Code 704~~)~~, 2027 edition; and

(c) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(2) ~~**Tanks.**~~ A large quantity generator accumulating hazardous waste in tanks shall do the following:

(a) Mark or label its tanks with the words "hazardous waste";

(b) Mark or label its tanks with an indication of the hazards of the contents ~~(examples~~. Examples include the applicable hazardous waste ~~characteristic (i.e.,~~characteristics of ignitable, corrosive, reactive, or toxic~~)~~; hazard communication consistent with the department of transportation requirements at title 49~~ CFR~~, Code of Federal Regulations, part 172 subpart E~~ (labeling)~~ or subpart F ~~(placarding)~~, as amended December 27, 2022; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at title 29 ~~CFR~~, Code of Federal Regulations, 1910.1200, as amended February 13, 2022; or a chemical hazard label consistent with the National Fire Protection Association Code 704~~)~~, 2027 edition;

(c) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within ninety days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within ninety days of first entering; and

(d) Keep inventory logs or records with the above information onsite and readily available for inspection.

f. ~~**Emergency procedures.**~~ The large quantity generator ~~complies~~shall comply with the standards in sections 33.1-24-05-15 through 33.1-24-05-36.

g. ~~**Personnel training.**~~

(1) Facility personnel ~~must~~ successfully shall complete a program of classroom instruction, online training ~~(e.g.,~~such as computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator shall ensure that this program includes all the elements described subparagraph b.

(a) This program must be directed by a person trained in hazardous waste management procedures~~,~~ and must include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation, relevant to the positions in which they are employed.

(b) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

[1] Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

[2] Key parameters for automatic waste feed cut-off systems;

[3] Communications or alarm systems;

[4] Response to fires or explosions;

[5] Response to ground-water contamination incidents; and

[6] Shutdown of operations.

(2) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the conditions of exemption in this section.

(3) Facility personnel successfully shall complete the program required in subdivision g of subsection 1 of section 33.1-24-03-29 within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees may not work in unsupervised positions until they have completed the training standards of subdivision g of subsection 1 of section 33.1-24-03-29.

(4) Facility personnel shall take part in an annual review of the initial training required in subdivision g of subsection 1~~ of section 33.1-24-03-28~~.

(5) The large quantity generator shall maintain the following documents and records at the facility:

(a) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(b) A written job description for each position listed under subparagraph a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(c) A written description of the type and amount of both introductory and continuing training that ~~will~~must be given to each person filling a position listed under subparagraph a;

(d) Records that document ~~that ~~the required training or job experience has been given to, and completed by, facility personnel.

(6) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

h. ~~**Closure.** ~~A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, shall meet the following conditions:

(1) ~~**Notification for closure of a waste accumulation unit.** ~~A large quantity generator shall perform one of the following ~~when~~if closing a waste accumulation unit:

(a) Place a notice in the operating record within thirty days after closure identifying the location of the unit within the facility; or

(b) Meet the closure performance standards of paragraph 3 for container, tank, and containment building waste accumulation units or paragraph 4 for drip pads and notify environmental protection agency following the procedures in paragraph 2 for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(2) ~~**Notification for closure of the facility.**~~A large quantity generator shall:

(a) Notify the department using form 8700-12 no later than thirty days prior to closing the facility.

(b) Notify the department using form 8700-12 within ninety days after closing the facility that it has complied with the closure performance standards of paragraph 3 or 4. If the facility cannot meet the closure performance standards of paragraph 3 or 4, notify the department using form 8700-12 that it ~~will~~shall close as a landfill under the standards of section 33.1-24-05-180 in the case of a container, tank, or containment building unit, or for a facility with drip pads, notify using form 8700-12 that it ~~will~~shall close under the standards of subsection 3 of section 33.1-24-05-506.

(c) A large quantity generator may request additional time to close, but it ~~must~~shall notify the department using form 8700-12 within seventy-five days after the date provided in subparagraph a to request an extension and provide an explanation as to why the additional time is required.

(3) ~~**Closure performance standards for container, tank systems, and containment building waste accumulation units.**~~ At closure, the generator shall close the waste accumulation unit or facility in a manner that:

(a) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the postclosure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.

(b) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units, including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless subsection 4 of section 33.1-24-02-03 applies.

(c) ~~Any~~Manages any hazardous waste generated in the process of closing either the generator's facility or unit accumulating hazardous waste ~~must be managed~~ in accordance with all applicable standards of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-250 through 33.1-24-05-399, including removing any hazardous waste contained in these units within ninety days of generating it and managing these wastes in a Resource Conservation and Recovery Act Subtitle C hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(d) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in subparagraph b of paragraph 3 of subdivision h of subsection 1 of section 33.1-24-03-29, ~~then~~considers the waste accumulation unit ~~is considered~~ to be a landfill and the generator shall close the waste accumulation unit and perform postclosure care in accordance with the closure and ~~post-closure~~postclosure care requirements that apply to landfills (section 33.1-24-05-180). In addition, for the purposes of closure, postclosure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator shall meet all of the requirements for landfills specified in sections 33.1-24-05-59 through 33.1-24-05-88.

(4) ~~**Closure performance standards for drip pad waste accumulation units.**~~ At closure, the generator shall comply with the closure requirements of paragraph 2 of subdivision h of subsection 1 of section 33.1-24-03-29 and subparagraphs a and c of paragraph 3 of subdivision h of subsection 1 of section 33.1-24-03-29, and sections 33.1-24-05-505 and 33.1-24-05-506.

(5) The closure requirements of paragraph 3 of subdivision h ~~of this subsection~~ do not apply to satellite accumulation areas.

i. ~~**Land disposal restrictions.**~~ The large quantity generator ~~complies~~shall comply with all applicable requirements in sections 33.1-24-05-250 through 33.1-24-05-399.

2. ~~**Accumulation time limit extension.**~~ A large quantity generator ~~who~~that accumulates hazardous waste for more than ninety days is subject to the permit requirements of chapters 33.1-24-06 and 33.1-24-07~~,~~ and the notification requirements of section 33.1-24-03-03, unless it has been granted an extension to the ninety-day period. Such extension may be granted by the department if hazardous wastes must remain onsite for longer than ninety days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the department on a case-by-case basis.

3. ~~**Accumulation of F006.**~~ A large quantity generator that also generates wastewater treatment sludges from electroplating operations that meet the listing description for the environmental protection agency hazardous waste number F006, may accumulate F006 waste onsite for more than ninety days, but not more than one hundred eighty days without being subject to chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, provided that it complies with all of the following additional conditions for exemption:

   a. The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

   b. The F006 waste is legitimately recycled through metals recovery;

   c. No more than twenty thousand kilograms [44,092 pounds] of F006 waste is accumulated onsite at any one time; and

   d. The F006 waste is managed in accordance with the following:

      (1) If the F006 waste is placed in containers, the large quantity generator ~~must~~shall comply with the applicable conditions for exemption in subdivision a of subsection 1 of section 33.1-24-03-29;

      (2) If the F006 is placed in tanks, the large quantity generator ~~must~~shall comply with the applicable conditions for exemption of subdivision b of subsection 1 of section 33.1-24-03-29;

      (3) If the F006 is placed in containment buildings, the large quantity generator ~~must~~shall comply with sections 33.1-24-05-475 through 33.1-24-05-477 and has placed its professional engineer certification that the building complies with the design standards specified in section 33.1-24-05-476 in the facility's files prior to operation of the unit. The large quantity generator ~~must~~shall maintain the following records:

         (a) A written description of procedures to ensure that the F006 waste remains in the unit for no more than one hundred eighty days, a written description of the waste generation and management practices for the facility showing that they are consistent with the one hundred eighty-day limit, and documentation that the large quantity generator is complying with the procedures; or

         (b) Documentation that the unit is emptied at least once every one hundred eighty days.

(4) The large quantity generator is exempt from all the requirements in sections 33.1-24-05-57 through 33.1-24-05-88, except for those referenced in subdivision h of subsection 1 of section 33.1-24-05-29.

(5) The date upon which each period of accumulation begins is clearly marked and must be clearly visible for inspection on each container;

(6) While being accumulated onsite, each container and tank is labeled or marked clearly with:

(a) The words "hazardous waste"; and

(b) An indication of the hazards of the contents ~~(examples~~, Examples include the applicable hazardous waste ~~characteristic (i.e.,~~characteristics of ignitable, corrosive, reactive, or toxic~~)~~; hazard communication consistent with the department of transportation requirements at title 49 ~~CFR~~, Code of Federal Regulations, part 172 subpart E ~~(labeling)~~ or subpart F ~~(placarding)~~, as amended December 27, 2022; a hazard statement or pictogram consistent with the occupational safety and health administration hazard communication standard at title 29 ~~CFR~~, Code of Federal Regulations, 1910.1200, as amended February 13, 2026; or a chemical hazard label consistent with the National Fire Protection Association Code 704~~)~~, 2027 edition.

(7) The large quantity generator complies with the requirements in subdivisions e and f.

e. ~~**F006 transported over two hundred miles.**~~ A large quantity generator that also generates wastewater treatment sludges from electroplating operations that meet the listing description for the environmental protection agency hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more for offsite metals recovery, may accumulate F006 waste onsite for more than ninety days, but not more than two hundred seventy days without being subject to chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, if the large quantity generator complies with all of the conditions for exemption in subdivisions a through d of subsection 3 of section 33.1-24-03-29.

f. ~~**F006 accumulation time extension.**~~ A large quantity generator accumulating F006 in accordance with subdivisions a through d of subsection 3 of section 33.1-24-03-29 that accumulates F006 waste onsite for more than one hundred eighty days (or for more than two hundred seventy days if the generator must transport this waste, or offer this waste for transportation, over a distance of two hundred miles or more), or who accumulates more than twenty thousand kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, unless the generator has been granted an extension to the one hundred-day (or two hundred seventy-day if applicable) period or an exception to the twenty thousand kilogram accumulation limit. Such extensions and exceptions may be granted by environmental protection agency if F006 waste must remain onsite for longer than one hundred eighty days (or two hundred seventy days if applicable) or if more than twenty thousand kilograms of F006 waste must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days or an exception to the accumulation limit may be granted at the discretion of the regional administrator on a case-by-case basis.

4. ~~**Consolidation of hazardous waste received from very small quantity generators.**~~ Large quantity generators may accumulate onsite hazardous waste received from very small quantity generators under control of the same person ~~(~~, as defined in section 33.1-24-01-04~~)~~,

without a storage permit or interim status and without complying with the requirements of chapters 33.1-24-06 and 33.1-24-07, and the notification requirements of section 33.1-24-03-03, provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person ~~shall~~may not be deemed to "control" such generators. The large quantity generator:

a. ~~The large quantity generator notifies~~Notifies the department at least thirty days prior to receiving the first shipment from a very small quantity generator using environmental protection agency form 8700-12;

b. Identifies on the form the name and site address for the very small quantity generator as well as the name and business telephone number for a contact person for the very small quantity generator; and

c. Submits an updated ~~Site~~site identification form (environmental protection agency form 8700-12) within thirty days after a change in the name or site address for the very small quantity generator.

d. ~~The large quantity generator maintains~~Maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records must identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

e. ~~The large quantity generator complies~~Complies with the independent requirements identified in subdivision c of subsection 1 of section 33.1-24-03-01 and the conditions for exemption in this section for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in subdivision e of subsection 1 of section 33.1-24-03-29, the large quantity generator shall label the container or unit with the date accumulation started (i.e., the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated onsite.

5. ~~**Rejected load.**~~ A large quantity generator that sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of section 33.1-24-05-39 may accumulate the returned waste onsite in accordance with subsections 1 through 4. Upon receipt of the returned shipment, the generator ~~must~~shall:

   a. Sign item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

   b. Sign item 20 of the manifest, if the transporter returned the shipment using a new manifest.

History: Effective July 1, 2020; amended effective July 1, 2021; October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

APPENDIX I

UNIFORM HAZARDOUS WASTE MANIFEST AND INSTRUCTIONS
(Environmental Protection Agency Forms 8700-22 and 8700-22A and Their Instructions)

United States Environmental Protection Agency Form 8700-22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used - press down hard.

2. State and federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to use this form (8700-22) and, if necessary, the continuation sheet (form 8700-22A) for both interstate and intrastate transportation of hazardous waste.

3. State regulations also require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete the following information:

   a. State regulations under section 33.1-24-03-16 (additional reporting) requires the generator to provide the department with a signed copy of the manifest when first signed by the generator and transporter and as signed by and received from the designated facility or alternate facility.

* * * * * *

The following statement must be included with each uniform hazardous waste manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: thirty minutes for generators, ten minutes for transporters, and twenty-five minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing, and transmitting the form. Any correspondence regarding the Paperwork Reduction Act burden statement for the manifest must be sent to the director of the collection strategies division in environmental protection agency's office of information collection at the following address: United States Environmental Protection Agency (2822T), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460. Do not send the completed form to this address.

I. Instructions for generators

Item 1. Generator's identification number

Enter the generator's environmental protection agency twelve digit identification number, or the state generator identification number if the generator site does not have an environmental protection agency identification number.

Item 2. Page 1 of __

Enter the total number of pages used to complete this manifest (for example, the first page (environmental protection agency form 8700-22) plus the number of continuation sheets (environmental protection agency form 8700-22A), if any).

Item 3. Emergency response phone number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored twenty-four hours a day at all times the waste is in transportation (including transportation-related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup or incident mitigation, or both, information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

NOTE: Emergency response phone number information should only be entered in item 3 when there is one phone number that applies to all the waste materials described in item 9b. If a situation (for example, consolidated shipments) arises where more than one emergency response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in item 9b.

Item 4. Manifest tracking number

This unique tracking number must be preprinted on the manifest by the forms printer.

Item 5. Generator's mailing address, phone number, and site address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or the generator's authorized agent may be reached to provide instructions in the event the designated, or alternate, or both, (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 company name and identification number

Enter the company name and environmental protection agency identification number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 company name and identification number

If applicable, enter the company name and environmental protection agency identification number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here. If more than two transporters are needed, use a continuation sheet or sheets (environmental protection agency form 8700-22A).

Item 8. Designated facility name, site address, and identification number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the environmental protection agency twelve digit identification number of the facility.

Item 9. United States department of transportation description (including proper shipping name, hazard class or division, identification number, and packing group)

Item 9a. If the wastes identified in item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this item next to the corresponding hazardous material identified in item 9b.

Item 9b. Enter the United States department of transportation proper shipping name, hazard class or division, identification number (UN/NA) and packing group for each waste as identified

in 49 CFR 172. Include technical name or names and reportable quantity references, if applicable.

NOTE: If additional space is needed for waste descriptions, enter these additional descriptions in item 27 on the continuation sheet (environmental protection agency form 8700-22A). Also, if more than one emergency response phone number applies to the various wastes described in either item 9b or item 27, enter applicable emergency response phone numbers immediately following the shipping descriptions for those items.

Item 10. Containers (number and type)

Enter the number of containers for each waste and the appropriate abbreviation from table I (below) for the type of container.

Table I - Types of Containers

BA	=	Burlap, cloth, paper, or plastic bags
CF	=	Fiber or plastic boxes, cartons, cases
CM	=	Metal boxes, cartons, cases (including roll-offs)
CW	=	Wooden boxes, cartons, cases
CY	=	Cylinders
DF	=	Fiberboard or plastic drums, barrels, kegs
DM	=	Metal drums, barrels, kegs
DT	=	Dump truck
DW	=	Wooden drums, barrels, kegs
HG	=	Hopper or gondola cars
TC	=	Tank cars
TP	=	Portable tanks
TT	=	Cargo tanks (tank trucks)

Item 11. Total quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow the generator to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of measure (weight or volume)

Enter, in designated boxes, the appropriate abbreviation from table II (below) for the unit of measure.

Table II - Units of Measure

G	=	Gallons (liquids only)

K	=	Kilograms
L	=	Liters (liquids only)
M	=	Metric tons (1000 kilograms)
N	=	Cubic meters
P	=	Pounds
T	=	Tons (2000 pounds)
Y	=	Cubic yards

NOTE: Tons, metric tons, cubic meters, and cubic yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste codes

Enter up to six federal and state waste codes to describe each waste stream identified in item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special handling instructions and additional information

1. Generators may enter any special handling or shipment specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are reshipped under a second manifest; and the specification of polychlorinated biphenyl waste descriptions and polychlorinated biphenyl out of service dates required under 40 CFR 761.207. Generators; however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's or offeror's certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of the Resource Conservation and Recovery Act are also certifying that they have complied with the waste minimization requirements. The generator's certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, or placarded, or both, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the primary exporter, I certify that the contents of this consignment conform to the terms of the attached environmental protection agency acknowledgment of consent". When a party other than the generator prepares the shipment

for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or offeror personnel may preprint the words, "on behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator or offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

NOTE: All of the above information except the handwritten signature required in item 15 may be preprinted.

II. Instructions for international shipment block

Item 16. International shipments

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the United States customs when exporting the waste across United States borders.

III. Instructions for transporters

Item 17. Transporters' acknowledgments of receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters. If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

NOTE: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the international shipments block. Transporters carrying exports may also have responsibilities to enter information in the international shipments block. See above instructions for item 16.

IV. Instructions for owners and operators of treatment, storage, and disposal facilities

Item 18. Discrepancy

Item 18a. Discrepancy indication space

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by subsection 2 of section 33.1-24-05-39) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in subsections 3, 4, and 5 of section 33.1-24-02-07.

2. For rejected loads and residues (subsections 4, 5, and 6 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16), check the appropriate box

if the shipment is a rejected load (for example, rejected by the designated or alternate facility, or both, and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in item 14, the special handling block and additional information block of the additional manifests.

3. Owners or operators of facilities located in unauthorized states (for example, states in which the environmental protection agency administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within fifteen days of receiving the waste must submit to their regional administrator a letter with a copy of the manifest at issue describing the discrepancy and attempts to reconcile it (subsection 3 of section 33.1-24-05-39 and the applicable requirements of subsection 5 of section 33.1-24-06-16).

4. Owners or operators of facilities located in authorized states (for example, those states that have received authorization from the environmental protection agency to administer the hazardous waste management program) should contact their state agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate facility (or generator) for receipt of full load rejections

Enter the name, address, phone number, and environmental protection agency identification number of the alternate facility which the rejecting treatment, storage, or disposal facility has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting treatment, storage, or disposal facility may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate facility (or generator) signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial treatment, storage, or disposal facility.

Item 19. Hazardous waste report management method codes

Enter the most appropriate hazardous waste report management method code for each waste listed in item 9. The hazardous waste report management method code is to be entered by the first treatment, storage, or disposal facility that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the treatment, storage, or disposal facility.

Item 20. Designated facility owner or operator certification of receipt (except as noted in item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the manifest by signing and entering the date of receipt or rejection where indicated. Since the facility certification acknowledges receipt of the waste except as noted in the discrepancy space in item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in item 18a. Fully rejected wastes may be forwarded or returned using item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the manifest by signing and entering the date they received or rejected the waste in item 18c. Partially rejected wastes and residues must be reshipped under a new manifest, to be initiated and signed by the rejecting treatment, storage, or disposal facility as offeror of the shipment.

Manifest continuation sheet

Instructions - continuation sheet, environmental protection agency form 8700-22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used - press down hard.

This form must be used as a continuation sheet to form 8700-22 if:

1. More than two transporters are to be used to transport the waste; or
2. More space is required for the United States department of transportation descriptions and related information in item 9 of environmental protection agency form 8700-22. State and federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (environmental protection agency form 8700-22) and, if necessary, this continuation sheet (environmental protection agency form 8700-22A) for both interstate and intrastate transportation.

Item 21. Generator's identification number

Enter the generator's environmental protection agency twelve digit identification number or, the state generator identification number if the generator site does not have an environmental protection agency identification number.

Item 22. Page __ -

Enter the page number of this continuation sheet.

Item 23. Manifest tracking number

Enter the manifest tracking number from item 4 of the manifest form to which this continuation sheet is attached.

Item 24. Generator's name -

Enter the generator's name as it appears in item 5 on the first page of the manifest.

Item 25. Transporter - company name

If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "transporter" the order of the transporter. For example, transporter three company name. Also, enter the environmental protection agency twelve digit identification number of the transporter described in item 25.

Item 26. Transporter - company name

If additional transporters are used to transport the waste described on this manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "transporter" the order of the transporter. For example, transporter four company name. Each continuation sheet can record the names of two additional transporters. Also enter the environmental protection agency twelve digit identification number of the transporter named in item 26.

Item 27. United States department of transportation description including proper shipping name, hazardous class, and identification number (UN/NA)

For each row enter a sequential number under item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for item 9 of the manifest for the information to be entered.

Item 28. Containers (number and type)

Refer to the instructions for item 10 of the manifest for information to be entered.

Item 29. Total quantity

Refer to the instructions for item 11 of the manifest form.

Item 30. Units of measure (weight or volume)

Refer to the instructions for item 12 of the manifest form.

Item 31. Waste codes

Refer to the instructions for item 13 of the manifest form.

Item 32. Special handling instructions and additional information

Refer to the instructions for item 14 of the manifest form.

Transporters

Item 33. Transporter - acknowledgment of receipt of materials

Enter the same number of the transporter as identified in item 25. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 25. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Item 34. Transporter - acknowledgment of receipt of materials

Enter the same number of the transporter as identified in item 26. Enter also the name of the person accepting the waste on behalf of the transporter (company name) identified in item 26. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Owner and operators of treatment, storage, or disposal facilities

Item 35. Discrepancy indication space

Refer to item 18. This space may be used to more fully describe information on discrepancies identified in item 18a of the manifest form.

Item 36. Hazardous waste report management method codes

For each field here, enter the sequential number that corresponds to the waste materials described under item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

Please print or type. Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST

UNIFORM HAZARDOUS WASTE MANIFEST	1. Generator ID Number	2. Page 1 of	3. Emergency Response Phone	4. Manifest Tracking Number

5. Generator's Name and Mailing Address — Generator's Site Address (if different than mailing address)

Generator's Phone:

6. Transporter 1 Company Name — U.S. EPA ID Number

7. Transporter 2 Company Name — U.S. EPA ID Number

8. Designated Facility Name and Site Address — U.S. EPA ID Number

Facility's Phone:

9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No.	10. Containers Type	11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes
	1.					
	2.					
	3.					
	4.					

14. Special Handling Instructions and Additional Information

15. **GENERATOR'S/OFFEROR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent.
I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name — Signature — Month Day Year

GENERATOR

16. International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit: ______
Transporter signature (for exports only): Date leaving U.S.:

INT'L

17. Transporter Acknowledgment of Receipt of Materials
Transporter 1 Printed/Typed Name — Signature — Month Day Year
Transporter 2 Printed/Typed Name — Signature — Month Day Year

TRANSPORTER

18. Discrepancy
18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection

Manifest Reference Number:

18b. Alternate Facility (or Generator) — U.S. EPA ID Number

Facility's Phone:

18c. Signature of Alternate Facility (or Generator) — Month Day Year

19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

1.	2.	3.	4.

20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a
Printed/Typed Name — Signature — Month Day Year

DESIGNATED FACILITY

EPA Form 8700-22 (Rev. 12-17) Previous editions are obsolete.

DESIGNATED FACILITY TO EPA's e-MANIFEST SYSTEM

VOID

Please print or type. Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)	21. Generator ID Number	22. Page	23. Manifest Tracking Number

GENERATOR

24. Generator's Name

25. Transporter ____ Company Name — U.S. EPA ID Number

26. Transporter ____ Company Name — U.S. EPA ID Number

27a. HM	27b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	28. Containers No.	28. Containers Type	29. Total Quantity	30. Unit Wt./Vol.	31. Waste Codes

VOID

32. Special Handling Instructions and Additional Information

TRANSPORTER

33. Transporter ____ Acknowledgment of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

34. Transporter ____ Acknowledgment of Receipt of Materials

Printed/Typed Name | Signature | Month Day Year

DESIGNATED FACILITY

35. Discrepancy

36. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

EPA Form 8700-22A (Rev. 12-17) Previous editions are obsolete.

DESIGNATED FACILITY TO EPA's e-MANIFEST SYSTEM

33.1-24-05-54. General ground water monitoring requirements.

The owner or operator shall comply with the following requirements for any ground water monitoring program developed to satisfy section 33.1-24-05-55, 33.1-24-05-56, or 33.1-24-05-57:

1. The ground water monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depth to yield ground water samples from the uppermost aquifer that:

   a. Represent the quality of background ground water that has not been affected by leakage from a regulated unit. A determination of background ground water quality may include sampling of wells that are not hydraulically upgradient of the waste management area ~~where~~if:

      (1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

      (2) Sampling at other wells ~~will provide~~provides an indication of background ground water quality that is representative or more representative than that provided by the upgradient wells.

   b. Represent the quality of ground water passing the point of compliance.

   c. Allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

2. If a facility contains more than one regulated unit, separate ground water monitoring systems are not required for each regulated unit provided that provisions for sampling the ground water in the uppermost aquifer ~~will~~ enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the ground water in the uppermost aquifer.

3. All 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.

4. The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of ground water quality below the waste management area. At a minimum, the program must include procedures and techniques for:

   a. Sample collection.

   b. Sample preservation and shipment.

   c. Analytical procedures.

   d. Chain of custody control.

5. The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents in ground water samples.

6. The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

7. In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit ~~will~~must be collected from background wells and wells at the compliance points the number and kinds of samples collected to establish background must be appropriate for the form of statistical test employed following generally accepted statistical principles. The sample site must be as large as necessary to ensure with reasonable confidence that a contaminant released to ground water from a facility ~~will~~must be detected. The owner or operator ~~will~~shall determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which must be specified in the unit permit upon approval by the department. This sampling procedure must be:

   a. A sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifers effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

   b. An alternate sampling procedure proposed by the owner or operator and approved by the department.

8. The owner or operator ~~will~~shall specify one of the following statistical methods to be used in evaluating ground water monitoring data for each hazardous constituent which, upon approval by the department, ~~will~~must be specified in the unit permit. The statistical test chosen must be conducted separately for each hazardous constituent in each well. ~~Where~~If practical quantification limits are used in any of the following statistical procedures to comply with subdivision e of subsection 9, the practical quantification limits must be proposed by the owner or operator and approved by the department. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in subsection 9.

   a. 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 wells mean and the background mean levels for each constituent.

   b. 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 wells median and the background median levels for each constituent.

   c. 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.

   d. A control chart approach that gives control limits for each constituent.

   e. Another statistical test method submitted by the owner or operator and approved by the department.

9. Any statistical method chosen under subsection 8 for specification in the unit permit ~~shall~~must comply with the following performance standards, as appropriate:

   a. The statistical method used to evaluate ground water monitoring data must be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data ~~should~~must be transformed or a distribution-free theory test ~~should~~must be used. If the distributions for the constituents differ, more than one statistical method may be needed.

b. 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 one error level no less than one hundredth for each testing period. If a multiple comparisons procedure is used, the type one experiment wise error rate for each testing period must be no less than five hundredths; however, the type one error of no less than one hundredth for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

c. 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 proposed by the owner or operator and approved by the department if the department finds it to be protective of human health and the environment.

d. If a tolerance interval or a prediction interval is used to evaluate ground water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, must be proposed by the owner or operator and approved by the department if the department finds these parameters to be protective of human health and the environment. These parameters ~~will~~must be determined after considering the number of samples in the background ~~data base~~database, the data distribution, and the range of the concentration values for each constituent of concern.

e. The statistical method must account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit approved by the department under subsection 8 that is used in the statistical method must be the lowest concentration level that ~~can~~may be ~~reliably~~ achieved reliably within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

f. If necessary, the statistical method must include procedures to control or correct for seasonal and ~~spacial~~spatial variability as well as temporal correlation in the data.

10. Ground water monitoring data collected in accordance with subsection 7 including actual levels of constituents must be maintained in the facility operating record. The department ~~will~~shall specify in the permit when the data must be submitted for review.

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-05-81. Wording of the instruments.

1. ~~Trust agreement and certification of acknowledgment.~~

~~—————~~a. A trust agreement for a trust fund as specified in section 33.1-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted~~.~~:

TRUST AGREEMENT, the "AGREEMENT" entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR", and [name of corporate trustee], [insert "incorporated in the state of ____________" or "a national bank"], the "TRUSTEE".

Whereas, the North Dakota Department of Environmental Quality, "DEPARTMENT" a regulatory agency of the state of North Dakota, has established certain regulations applicable to the GRANTOR requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure or postclosure, or both, care of the facility,

Whereas, the GRANTOR has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the GRANTOR acting through its duly authorized officers has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT and the TRUSTEE is willing to act as TRUSTEE,

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

Section 1. Definitions. As used in this AGREEMENT:

(a) The term GRANTOR means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.

(b) The term TRUSTEE means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

Section 2. Identification of Facilities and Cost Estimate. ~~**This AGREEMENT pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A for each facility list the identification number, name, and the current closure or postclosure, or both, cost estimates or portions thereof for which financial assurance is demonstrated by this AGREEMENT]**~~This AGREEMENT pertains to the facilities and cost estimates identified on the attached Schedule A. Schedule A should list the following for each facility: identification number assigned by the environmental protection agency, facility name and address, the current closure, postclosure, or both, cost estimates or portions thereof for which financial assurance is demonstrated by this AGREEMENT.

Section 3. Establishment of FUND. The GRANTOR and the TRUSTEE hereby establish a trust fund, the FUND, for the benefit of the DEPARTMENT. The GRANTOR and the TRUSTEE intend that no third party have access to the FUND, except as herein provided. The FUND is established initially as consisting of the property which is acceptable to the TRUSTEE and described in Schedule B attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND must be held by the TRUSTEE, IN TRUST, as herein provided. The TRUSTEE is not responsible, nor may it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

Section 4. Payment for Closure and Postclosure Care. The TRUSTEE shall make payments from the FUND as the DEPARTMENT shall direct, in writing, to provide for the payment of the cost of closure~~,~~ and ~~or~~ postclosure care of the facilities covered by this AGREEMENT. The TRUSTEE shall reimburse the GRANTOR or other persons as specified by the DEPARTMENT from the FUND for closure and postclosure expenditures in such amounts as the DEPARTMENT shall direct in writing. In addition, the TRUSTEE shall refund to the GRANTOR such amounts as the DEPARTMENT specifies in writing. Upon refund such funds no longer constitute part of the FUND as defined herein.

Section 5. Payments Comprising the FUND. Payments made to the TRUSTEE for the FUND must consist of cash or securities acceptable to the TRUSTEE.

Section 6. TRUSTEE Management. The TRUSTEE shall invest and reinvest the principal and income of the FUND and keep the FUND invested as a single FUND, without distinction between principal and income, in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time~~,~~ subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the trustee's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the GRANTOR ~~or~~, any other owner or operator of the facilities or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), may not be acquired or held unless they are securities or other obligations of a federal or state government;

(b) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or state government; and

(c) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The TRUSTEE is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

Section 8. Express Powers of TRUSTEE. Without, in any way, eliminating the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE is bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE must at all times show that all such securities are part of the FUND;

(d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate capacity, or in any other banking institution affiliated with the TRUSTEE to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the FUND.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this TRUST, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements of the TRUSTEE, must be paid from the FUND.

Section 10. Annual Valuation. The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the TRUST. Any securities in the FUND must be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT, constitutes a conclusively binding assent by the GRANTOR barring the GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR, with respect to any question arising as to the construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. TRUSTEE Compensation. The TRUSTEE is entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

Section 13. Successor TRUSTEE. The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement is not effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE'S acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason, the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the TRUST in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section must be paid as provided in section 9.

Section 14. Instructions to the TRUSTEE. All orders, requests, and instructions by the GRANTOR to the TRUSTEE must be in writing, signed by such persons as are designated in the attached Exhibit A, or such other designees as the GRANTOR may designate by amendment to Exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE must be in writing, signed by an authorized DEPARTMENT representative and the TRUSTEE shall act and be fully protected in acting in accordance with such orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or the DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR or the DEPARTMENT, or both, except as provided ~~for~~ herein.

Section 15. Notice of Nonpayment. The TRUSTEE shall notify the GRANTOR and the DEPARTMENT by certified mail within ten days following the expiration of the thirty-day period after the anniversary of the establishment of the TRUST if no payment is received from the GRANTOR during that period. After the pay-in period is completed, the TRUSTEE is not required to send a notice of nonpayment.

Section 16. Amendment of AGREEMENT. This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this AGREEMENT as provided in section 16, this TRUST is irrevocable and continues until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the TRUST, all remaining trust property, less final trust administration expenses, must be delivered to the GRANTOR.

Section 18. Immunity and Indemnification. The TRUSTEE may not incur personal liability of any nature in connection with any act or omission made in good faith in the administration of this TRUST or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE must be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

Section 19. Choice of Law. This AGREEMENT must be administered, construed, and enforced according to the laws of the state of North Dakota.

Section 20. Interpretation. As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT do not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto fixed and attested as of the date first above written: The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subdivision a of subsection 1 of North Dakota Administrative Code section 33.1-24-05-81 as such regulation was constituted on the date first above written.

[Signature of GRANTOR]

[Title]

[Attest:]

[Title]

[Seal]

[Signature of TRUSTEE]

[Attest:]

[Title]

[Seal]

b. The following is an example of the certification of acknowledgment ~~which~~that must accompany the TRUST AGREEMENT for a trust fund as specified in subsection 1 of section 33.1-24-05-77.

State of ________________________

County of _______________________

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

2. A surety bond guaranteeing payment into a trust fund as specified in subsection 2 of section 33.1-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed: __________________________

Effective date: ______________________________

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: ______________________

Surety(ies): [name(s) and business address(es)]

EPA Identification number, name, address, and closure or postclosure, or both, amount(s) for each facility guaranteed by this bond [indicate closure and postclosure amounts separately]: ________________________________

Total penal sum of bond: $____________________

Surety's bond number: ________________________

Know all persons by these presents that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota Department of Environmental Quality (hereinafter called the DEPARTMENT) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and ~~assignors~~assigns jointly and severally~~:~~; provided that where the SURETY(IES) are corporations acting as cosureties, we, the SURETIES, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each SURETY binds itself, jointly and severally with the PRINCIPAL, for the payment of such sum only as is set forth opposite the name of such SURETY, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said PRINCIPAL is required under North Dakota Century Code chapter 23.1-04 to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure or closure and postclosure care as a condition of the permit~~,~~; and

Whereas said PRINCIPAL shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the PRINCIPAL shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the PRINCIPAL shall fund the standby trust fund in such amount(s) within fifteen days after an order to begin closure is issued by the DEPARTMENT or a state or other court of competent jurisdiction,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33.1-24-05, as applicable, and obtain the DEPARTMENT'S written approval of such assurance, within ninety days after the date of notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT from the SURETY(IES), then this obligation shall be null and void~~,~~; otherwise it is to remain in full force and effect.

The SURETY(IES) shall become liable on this bond obligation only when the PRINCIPAL has failed to fulfill the conditions described above. Upon notification by the DEPARTMENT that the PRINCIPAL has failed to perform as guaranteed by this bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The liability of the SURETY(IES) shall not be discharged by any payment or ~~any~~ succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the SURETY(IES) hereunder exceed the amount of said penal sum.

The SURETY(IES) may cancel the bond by sending notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT, as evidenced by the return receipts.

The PRINCIPAL may terminate this bond by sending written notice to the SURETY(IES) provided, however, that no such notice shall become effective until the SURETY(IES) receive(s) written authorization for termination of the bond by the DEPARTMENT.

[The following paragraph is an optional rider that may be included, but is not required.]

The PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure or postclosure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.

In witness whereof, the PRINCIPAL and SURETY(IES) have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the PRINCIPAL and SURETY(IES) and that the wording of this surety bond is identical to the wording specified in subsection 2 of North Dakota Administrative Code section 33.1-24-05-81 as such rule was constituted on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)
[Name and address]
State of Incorporation: ______________________
Liability limit: $ ___________________________
[Signature(s)]
[Name(s) and Title(s)]
[Corporate seal]
[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond premium: $ ______________________________

3. A surety bond guaranteeing performance of closure ~~or~~and postclosure care, as specified in subsection 3 of section 33.1-24-05-77, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: __________________________

Effective Date: ______________________________

PRINCIPAL: [Legal name and business address of owner or operator]

Type of organization: [Insert "Individual", "joint venture", "partnership", or "corporation"]

State of incorporation: ______________________

SURETY(IES): [Name(s) and business address(es)]

____

EPA Identification number, name, address and closure or postclosure, or both, amount(s) for each facility guaranteed by this bond.

[Indicate closure and postclosure amount separately]:

____

Total penal sum of bond: ______________________

Surety's bond number: _________________________

Know all persons by these presents, that we the PRINCIPAL and SURETY(IES) hereto are firmly bound to the North Dakota Department of Environmental Quality (hereinafter called the DEPARTMENT), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally~~:~~; Provided that, where the SURETY(IES) are corporations acting as cosureties, we the SURETIES bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us and for all other purposes each SURETY binds itself jointly and severally with the PRINCIPAL for the payment of such sum only as is set forth opposite the name of each SURETY, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said PRINCIPAL is required under North Dakota Century Code chapter 23.1-04 to have a permit to own or operate each hazardous waste management facility identified above, and

Whereas said PRINCIPAL is required to provide financial assurance for closure, or closure and postclosure care as a condition of the permit, and

Whereas said PRINCIPAL shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now~~, Therefore~~; therefore, the conditions of this obligation are that if the PRINCIPAL shall faithfully perform closure, when required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

And, if the PRINCIPAL shall faithfully perform postclosure care of each facility for which this bond guarantees postclosure care, in accordance with the postclosure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the PRINCIPAL shall provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33.1-24-05 and obtain the DEPARTMENT'S written approval of such assurance within ninety days after the date notice of cancellation is received by both the PRINCIPAL and the DEPARTMENT from the SURETY(IES) then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The SURETY(IES) shall become liable on this bond obligation only when the PRINCIPAL has failed to fulfill the conditions described above.

Upon notification by the DEPARTMENT that the PRINCIPAL has been found in violation of the closure requirements of North Dakota Administrative Code chapter 33.1-24-05 for a facility for which this bond guarantees performance of closure, the SURETY(IES) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has been found in violation of the postclosure requirements of North Dakota Administrative Code chapter 33.1-24-05 for a facility for which this bond guarantees performance of postclosure care, the SURETY(IES) shall either perform postclosure care in accordance with the postclosure plan and other permit requirements or place the postclosure amount guaranteed for the facility into a standby trust fund as directed by the DEPARTMENT.

Upon notification by the DEPARTMENT that the PRINCIPAL has failed to provide alternate financial assurance as specified in North Dakota Administrative Code chapter 33.1-24-05, and obtain written approval of such assurance from the DEPARTMENT during the ninety days following receipt by both the PRINCIPAL and the DEPARTMENT of a notice of cancellation of the bond, the SURETY(IES) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the DEPARTMENT.

The SURETY(IES) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the SURETY(IES) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the SURETY(IES) hereunder exceed the amount of said penal sum.

The SURETY(IES) may cancel the bond by sending the notice of cancellation by certified mail to the PRINCIPAL and to the DEPARTMENT, provided, however, that cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by both the PRINCIPAL and the DEPARTMENT, as evidenced by the return receipts.

The PRINCIPAL may terminate this bond by sending written notice to the SURETY(IES) provided, however, that no such notice shall become effective until the SURETY(IES) receive(s) written authorization for termination of the bond by the DEPARTMENT.

[The following paragraph is an optional rider that may be included, but is not required].

PRINCIPAL and SURETY(IES) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure or postclosure, or both, amount, provided that the penal sum does not increase by more than twenty percent in any one year, and no decrease in the penal sum takes place without the written permission of the DEPARTMENT.

In Witness Whereof, the PRINCIPAL and SURETY(IES) have executed this performance bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the PRINCIPAL and the SURETY(IES) and that the wording of this surety bond is identical to the wording specified in subsection 3 of North Dakota Administrative Code section 33.1-24-05-81 as such rule was constituted on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]

[Title(s)]
[Corporate Seal]

[CORPORATE SURETY(IES)]
[Name and Address]
State of Incorporation: ___________________________
Liability Limit: $ ________________________________
[Signature(s)]
[Name(s) and Title(s)]
Corporate Seal:
[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]

Bond Premium: $ ___________________________________

4. A letter of credit, as specified in subsection 4 of section 33.1-24-05-77, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

Director, North Dakota Department of Environmental Quality

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit Number ______ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] United States Dollars $ ______________, available upon presentation by you of

(1) You sight draft bearing reference to this letter of credit number ___________, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of North Dakota Century Code chapter 23.1-04".

This letter of credit is effective as of [date] and shall expire on [date] at least one year later, but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in subsection 4 of North Dakota Administrative Code section 33.1-24-05-81 as such rule was constituted on the date shown immediately below.

[Signature(s) and Title(s) of Official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce", or "the Uniform Commercial Code"]

5. A certificate of insurance as specified in subsection 5 of section 33.1-24-05-77 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

Name and address of Insurer (hereinafter called the "INSURER"):

____

Name and address of Insured (hereinafter called the "INSURED"):

____

Facilities covered: [List for each facility: the EPA identification number, name, address and amount of insurance for closure or the amount for postclosure care, or both. (These amounts for all facilities covered must cover the face amount shown below.)]

Face amount: __________________________

Policy Number: ________________________

Effective Date: _______________________

The INSURER hereby certifies that it has issued to the INSURED the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and postclosure care" or "postclosure care"] for the facilities identified above. The INSURER further warrants that such policy conforms in all respects with the requirements of subsection 5 of North Dakota Administrative Code section 33.1-24-05-77, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such rules is hereby amended to eliminate such inconsistency.

Whenever requested by the North Dakota Department of Environmental Quality (DEPARTMENT) the INSURER agrees to furnish to the DEPARTMENT a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in subsection 5 of North Dakota Administrative Code section 33.1-24-05-81 as such rule was constituted on the date shown immediately below.

[Authorized signature for INSURER]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _________________________

[Date]

6. A letter from the chief financial officer, as specified in subsection 6 of section 33.1-24-05-77, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer

[Address to North Dakota Department of Environmental Quality].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or postclosure costs, as specified in sections 33.1-24-05-74 through 33.1-24-05-88.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or postclosure care is demonstrated through the financial test specified in sections 33.1-24-05-74 through 33.1-24-05-88. The current closure and/or postclosure cost estimates covered by the test are shown for each facility: ________.

2. This firm guarantees, through the guarantee specified in sections 33.1-24-05-74 through 33.1-24-05-88, the closure or postclosure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or postclosure care so guaranteed are shown for each facility: ________. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ________; or (3) engaged in the following substantial business relationship with the owner or operator ________, and receiving the following value in consideration of this guarantee ________]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In states where the environmental protection agency is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in sections 33.1-24-05-74 through 33.1-24-05-88. The current closure and/or postclosure cost estimates covered by such a test are shown for each facility: ________.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanism specified in sections 33.1-24-05-74 through 33.1-24-05-88 or equivalent or substantially equivalent state mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: ________.

5. This firm is the owner or operator of the following underground injective control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: __________.

This firm [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33.1-24-05-77 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-77 are used.]

Alternative I

1.	Sum of current closure and postclosure cost estimate (total of all cost estimates shown in the five paragraphs above).	$
*2.	Total liabilities (if any portion of the closure or postclosure cost estimate is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4).	$
*3.	Tangible net worth.	$
*4.	Net worth.	$
*5.	Current assets.	$
*6.	Current liabilities.	$
7.	Net working capital (line 5 minus line 6).	$
*8.	The sum of net income plus depreciation, depletion, and amortization.	$
*9.	Total assets in United States (required only if less than 90% of firm's assets are located in the United States).	$

		Yes	No
10.	Is line 3 at least $10 million?		
11.	Is line 3 at least 6 times line 1?		
12.	Is line 7 at least 6 times line 1?		
*13.	Are at least 90% of firm's assets located in the United States? If not, complete line 14.		
14.	Is line 9 at least 6 times line 1?		
15.	Is line 2 divided by line 4 less than 2.0?		
16.	Is line 8 divided by line 2 greater than 0.1?		
17.	Is line 5 divided by line 6 greater than 1.5?		

Alternative II

1.	Sum of current closure and postclosure cost estimates (total of all cost estimates shown in the five paragraphs above).	$
2.	Current bond rating of most recent issuance of this firm and name of rating service.	$
3.	Date of issuance of bond.	$

4.	Date of maturity of bond.	$	
*5.	Tangible net worth (if any portion of the closure and postclosure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line).	$	
*6.	Total assets in United States (required only if less than 90% of firm's assets are located in the United States).	$	

		Yes	No
7.	Is line 5 at least $10 million?		
8.	Is line 5 at least 6 times line 1?		
*9.	Are at least 90% of firm's assets located in the United States? If not, complete line 10.		
10.	Is line 6 at least 6 times line 1?		

I hereby certify that the wording of this letter is identical to the wording specified in subsection 6 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature] ____________________

[Name] _______________________

[Title] ________________________

[Date] _______________________

7. A letter from the chief financial officer, as specified in subsection 6 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter from Chief Financial Officer:

[Address to North Dakota Department of Environmental Quality].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or postclosure care" if applicable] as specified in sections 33.1-24-05-74 through 33.1-24-05-88.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in sections 33.1-24-05-74 through 33.1-24-05-88:

The firm identified above guarantees, through the guarantee specified in sections 33.1-24-05-74 through 33.1-24-05-88, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _______________. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ___________; or (3) engaged in the following substantial business relationship with the owner or operator ________, and receiving the following value in consideration of this guarantee ________]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and postclosure care, fill in the following five paragraphs regarding facilities and associated closure and postclosure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or postclosure cost estimates. Identify each cost estimate as to whether it is for closure or postclosure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or postclosure care or liability coverage is demonstrated through the financial test specified in sections 33.1-24-05-74 through 33.1-24-05-88. The current closure and postclosure cost estimates covered by the test are shown for each facility: ________.

2. The firm identified above guarantees, through the guarantee specified in sections 33.1-24-05-74 through 33.1-24-05-88, the closure and postclosure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or postclosure care so guaranteed are shown for each facility: ________.

3. In states where the environmental protection agency is not administering the financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or postclosure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure or postclosure cost estimates covered by such a test are shown for each facility: ________.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, postclosure care, is not demonstrated to the DEPARTMENT through the financial test or any other financial assurance mechanisms specified in sections 33.1-24-05-74 through 33.1-24-05-88 or equivalent or substantially equivalent state mechanisms. The current closure and/or postclosure cost estimates not covered by such financial assurance are shown for each facility: ________.

5. This firm is the owner or operator or guarantor of the following underground injective control facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: __________.

This firm [insert "is required" or "is not required"] to file a form 10K with the securities and exchange commission for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33.1-24-05-79 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-79 are used.]

Alternative I

1.	Amount of annual aggregate liability coverage to be demonstrated.	$	
*2.	Current assets.	$	
*3.	Current liabilities.	$	
4.	Net working capital (line 2 minus line 3).	$	
*5.	Tangible net worth.	$	
*6.	If less than 90% of assets are located in the United States, give total United States assets.	$	
		Yes	No
7.	Is line 5 at least $10 million?		
8.	Is line 4 at least 6 times line 1?		
9.	Is line 5 at least 6 times line 1?		
*10.	Are at least 90% of assets located in the United States? If not, complete line 11.		
11.	Is line 6 at least 6 times line 1?		

Alternative II

1.	Amount of annual aggregate liability coverage to be demonstrated.	$	
2.	Current bond rating of most recent issuance and name of rating service.		
3.	Date of issuance of bond.		
4.	Date of maturity of bond.		
*5.	Tangible net worth.	$	
*6.	Total assets in United States (required only if less than 90% of assets are located in the United States).	$	
		Yes	No
7.	Is line 5 at least $10 million?		
8.	Is line 5 at least 6 times line 1?		
9.	Are at least 90% of assets located in the United States? If not, complete line 10.		
10.	Is line 6 at least 6 times line 1?		

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or postclosure care.]

Part B. Closure or Postclosure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraph 1 of subdivision a of subsection 6 of section 33.1-24-05-77 and paragraph 1 of subdivision a of subsection 6 of section 33.1-24-05-79 are used. Fill in Alternative II if the criteria of paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-77 and paragraph 2 of subdivision a of subsection 6 of section 33.1-24-05-79 are used.]

Alternative I

1.	Sum of current closure and postclosure cost estimates (total of all cost estimates listed above).	$
2.	Amount of annual aggregate liability coverage to be demonstrated.	$
3.	Sum of lines 1 and 2.	$
*4.	Total liabilities (if any portion of your closure or postclosure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6).	$
*5.	Tangible net worth.	$
*6.	Net worth.	$
*7.	Current assets.	$
*8.	Current liabilities.	$
9.	Net working capital (line 7 minus line 8).	$
*10.	The sum of net income plus depreciation, depletion, and amortization.	$
*11.	Total assets in United States (required only if less than 90% of assets are located in the United States).	$

		Yes	No
12.	Is line 5 at least $10 million?		
13.	Is line 5 at least 6 times line 3?		
14.	Is line 9 at least 6 times line 3?		
*15.	Are at least 90% of assets located in the United States? If not, complete line 16.		
16.	Is line 11 at least 6 times line 3?		
17.	Is line 4 divided by line 6 less than 2.0?		
18.	Is line 10 divided by line 4 greater than 0.1?		
19.	Is line 7 divided by line 8 greater than 1.5?		

Alternative II

1. Sum of current closure and postclosure cost estimates (total of all cost estimates listed above).	$
2. Amount of annual aggregate liability coverage to be demonstrated.	$
3. Sum of lines 1 and 2.	$
4. Current bond rating of most recent issuance and name of rating service.	
5. Date of issuance of bond.	
6. Date of maturity of bond.	
*7. Tangible net worth (if any portion of the closure or postclosure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line).	$
*8. Total assets in the United States (required only if less than 90% of assets are located in the United States).	$

	Yes	No
9. Is line 7 at least $10 million?		
10. Is line 7 at least 6 times line 3?		
*11. Are at least 90% of assets located in the United States? If not, complete line 12.		
12. Is line 8 at least 6 times line 3?		

I hereby certify that the wording of this letter is identical to the wording specified in subsection 7 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below.

[Signature] ____________________

[Name] ______________________

[Title] _______________________

[Date] ______________________

8. ~~Corporate Guarantee~~

a. A corporate guarantee, as specified in subsection 6 of section 33.1-24-05-77, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure or Postclosure Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33.1-24-05-75 to the DEPARTMENT.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 6 of section 33.1-24-05-77.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address. Indicate for each whether guarantee is for closure, postclosure care, or both.]

3. "Closure plans" and "postclosure plans" as used below refer to the plans maintained as required by sections 33.1-24-05-59 through 33.1-24-05-73 for the closure and postclosure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the DEPARTMENT that in the event that [owner or operator] fails to perform [insert "closure", "postclosure care", or "closure and postclosure care"] of the above facility(ies) in accordance with the closure or postclosure plans and other permit or interim status requirements when required to do so, the guarantor shall do so or establish a trust fund as specified in sections 33.1-24-05-74 through 33.1-24-05-88, as applicable, in the name of [owner or operator] in the amount of the current closure or postclosure cost estimates as specified in sections 33.1-24-05-74 through 33.1-24-05-88.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate financial assurance as specified in sections 33.1-24-05-74 through 33.1-24-05-88, as applicable, in the name of [owner or operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the DEPARTMENT by certified mail, of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure or postclosure care, the guarantor shall establish alternate financial assurance as specified in sections 33.1-24-05-74 through 33.1-24-05-88, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or postclosure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or postclosure, or any other modification or alteration of an obligation of the owner or operator pursuant to sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of sections 33.1-24-05-74

through 33.1-24-05-88 for the above-listed facilities, except as provided in paragraph 10 of this AGREEMENT.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate closure and/or postclosure care coverage complying with section 33.1-24-05-77.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator] obtains, and the DEPARTMENT approves, alternate closure or postclosure, or both, care coverage complying with section 33.1-24-05-77 or 33.1-24-05-78 or both.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator.]

Guarantor may terminate this guarantee one hundred twenty days following the receipt of notification, through certified mail, by the DEPARTMENT and by the [owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in sections 33.1-24-05-74 through 33.1-24-05-88, as applicable, and obtain written approval of such assurance from the DEPARTMENT within ninety days after a notice of cancellation by the guarantor is received by the DEPARTMENT from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the DEPARTMENT or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or postclosure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 8 of section 33.1-24-05-81 as such regulations were constituted on the date first above written.

Effective date: ___________________________

[Name of guarantor] ___________________________

[Authorized signature for guarantor] ___________________________

[Name of person signing] ___________________________

[Title of person signing] ___________________________

Signature of witness or notary: ___________________________

b. A guarantee, as specified in subsection 7 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the state of ______________" and insert name of state; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the state of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in subsection 8 of section 33.1-24-05-75", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in subsection 7 of section 33.1-24-05-79.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each state.] This corporate guarantee satisfies Resource Conservation Recovery Act third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody, or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety days, by certified mail, notice to the DEPARTMENT and to [owner or operator] that the guarantor intends to provide alternate liability coverage as specified in section 33.1-24-05-79, as applicable, in the name of [owner or operator]. Within one hundred twenty days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the DEPARTMENT by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within ten days after commencement of the proceeding.

7. Guarantor agrees that within thirty days after being notified by the DEPARTMENT of a determination that guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor, the guarantor shall establish alternate liability coverage as specified in section 33.1-24-05-79 in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this AGREEMENT to take into account amendment or modification of the liability requirements set by section 33.1-24-05-79, provided that such modification shall become effective only if the DEPARTMENT does not disapprove the modification within thirty days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of section 33.1-24-05-79 for the above-listed facility(ies), except as provided in paragraph 10 of this AGREEMENT.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the DEPARTMENT and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the DEPARTMENT approves, alternate liability coverage complying with section 33.1-24-05-79.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee one hundred twenty days following receipt of notification, through certified mail, by the DEPARTMENT and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert ~~principal~~Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $________.

[Signatures] ________________________
Principal ________________________
(Notary) Date ________________________
[Signatures] ________________________
Claimant(s) ________________________
(Notary) Date ________________________

(b) A valid final court order establishing a judgment against the ~~principal~~Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the ~~principal's~~Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in subdivision b of subsection 8 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below.

Effective date: ________________________
[Name of guarantor] ________________________
[Authorized signature for guarantor] ______________
[Name of person signing] ________________________
[Title of person signing] ________________________
Signature of witness or notary: ___________________

9. A hazardous waste facility liability endorsement as required in section 33.1-24-05-79 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33.1-24-05-79. The coverage applies at [list EPA identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability] exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e):

   (a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

   (b) The insurer is liable for the payment of amounts within any deductible applicable to this policy with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in subsection 6 of North Dakota Administrative Code section 33.1-24-05-79.

   (c) When requested by the North Dakota Department of Environmental Quality (DEPARTMENT), the insurer agrees to furnish to the DEPARTMENT a signed duplicate original of the policy and all endorsements.

   (d) Cancellation of this endorsement, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the DEPARTMENT.

   (e) Any other termination of this endorsement will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the DEPARTMENT, as evidenced by the return receipt.

   Attached to and forming part of policy number ________ issued by [name of insurer] herein called the insurer of [address of insurer] to [name of insured] of [address] this ________ day of ________, 20____. The effective date of said policy is ________ day of ________________, 20____.

   I hereby certify that the wording of this endorsement is identical to the wording specified in subsection 9 of North Dakota Administrative Code section 33.1-24-05-81, as such rule was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]

[Type name]

[Title], authorized representative of [name of insurer]

[Address of representative]

10. A certificate of liability insurance as required in section 33.1-24-05-79 must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of insurer, (the "insurer") of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under North Dakota Administrative Code section 33.1-24-05-79. The coverage applies at [list EPA identification number, name, and address for each facility] for [insert "sudden accidental occurrences", "nonsudden accidental occurrences", or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number ______, issued on [date] the effective date of said policy is [date].

2. The insurer further certifies the following with respect to the insurance described in paragraph 1:

   (a) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

   (b) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in subsection 6 of North Dakota Administrative Code section 33.1-24-05-79.

   (c) When requested by the North Dakota Department of Environmental Quality (DEPARTMENT), the insurer agrees to furnish to the DEPARTMENT a signed duplicate original of the policy and all endorsements.

   (d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice, and only after the expiration of sixty days after a copy of such written notice is received by the DEPARTMENT.

(e) Any other termination of the insurance will be effective only upon written notice, and only after the expiration of thirty days after a copy of such written notice is received by the DEPARTMENT, as evidenced by the return receipt.

I hereby certify that the wording of this instrument is identical to the wording specified in subsection ~~7~~10 of North Dakota Administrative Code section 33.1-24-05-81, as such regulation was constituted on the date first above written, and that the insurer is licensed to transact the business of insurance, in the state of North Dakota or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[Signature of authorized representative of insurer]

[Type name]

[Title], authorized representative of [name of insurer]

[Address of representative]

11. A letter of credit, as specified in subsection 8 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit
Name and Address of Issuing Institution
North Dakota Department of Environmental Quality

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ________ in the favor of ["any and all third-party liability claimants" or insert name of TRUSTEE of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] United States dollars $________ per occurrence and the annual aggregate amount of [in words] United States dollars $________, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] United States dollars $_______ per occurrence, and the annual aggregate amount of [in words] United States dollars $________, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. ________, and [insert the following language if the letter of credit is being used without a standby trust fund]: (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's], hazardous waste treatment, storage, or disposal facility should be paid in the amount of $ [______]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures] ________________________
GRANTOR ________________________
[Signatures] ________________________
Claimant(s) ________________________

or (2) a valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least one hundred twenty days before the current expiration date, we notify you, the DEPARTMENT, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

When this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage"].

We certify that the wording of this letter of credit is identical to the wording specified in subsection 11 of section 33.1-24-05-81 as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits published and copyrighted by the International Chamber of Commerce" or "the Uniform Commercial Code"].

12. A surety bond, as specified in subsection 9 of section 33.1-24-05-79, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], principal, incorporated in [Insert state of incorporation] of [Insert city and state of principal place of business] and [Insert name and address of surety company(ies)], surety company(ies), of [Insert surety(ies) place of business].

EPA Identification number, name, and address for each facility guaranteed by this bond:

	Sudden Accidental Occurrences	Nonsudden Accidental Occurrences
Penal Sum Per Occurrence	[Insert Amount]	[Insert Amount]
Annual Aggregate	[Insert Amount]	[Insert Amount]

Purpose: This is an AGREEMENT between the surety(ies) and the principal under which the surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the United States environmental protection agency ~~(EPA)~~, particularly 40 CFR ["264.147" or "265.147"] (if applicable).

(3) Rules and regulations of the governing state agency [particularly section 33.1-24-05-79 and subsection 5 of section 33.1-24-06-16 of the North Dakota Administrative Code] (if applicable).

Conditions:

(1) The principal is subject to the applicable governing provisions that require the principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the principal will satisfy valid third-party liability claims, as described in condition 1.

(3) If the principal fails to satisfy a valid third-party liability claim, as described above, the surety(ies) becomes liable on this bond obligation.

(4) The surety(ies) shall satisfy a third-party liability claim only upon the receipt of one of the following documents:

(a) Certification from the principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert name of principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $ [________].

[Signature]
Principal
[Notary] [Date]

[Signature(s)]
Claimant(s)
[Notary] [Date]

or (b) A valid final court order establishing a judgment against the principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the surety(ies) furnish(es) notice to the DEPARTMENT forthwith of all claims filed and payments made by the surety(ies) under this bond.

(7) The surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the principal and the DEPARTMENT provided, however, the cancellation shall not occur during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the principal and the DEPARTMENT, as evidenced by the return receipt.

(8) The principal may terminate this bond by sending written notice to the surety(ies) and to the DEPARTMENT.

(9) The surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the principal and surety(ies) have executed this bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the principal and surety(ies) and that the wording of this surety bond is identical to the wording specified in subsection 12 of section 33.1-24-05-81, as such regulations were constituted on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)
State of incorporation: _____________
Liability limit: $____________
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for surety above.]
Bond premium: $__________

13. ~~TRUST AGREEMENT~~

a. A TRUST AGREEMENT, as specified in subsection 10 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

TRUST AGREEMENT, the "AGREEMENT", entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR", and [name of corporate TRUSTEE], [insert, "incorporated in the state of __________" or "a national bank"], the "TRUSTEE".

Whereas, the North Dakota Department of Environmental Quality (DEPARTMENT) has established certain regulations applicable to the GRANTOR, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the GRANTOR, acting through its duly authorized officers, has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT, and the TRUSTEE is willing to act as TRUSTEE.

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

Section 1. Definitions. As used in this AGREEMENT:

(a) The term "GRANTOR" means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.

(b) The term "TRUSTEE" means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

Section 2. Identification of Facilities. This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

Section 3. Establishment of FUND. The GRANTOR and the TRUSTEE hereby establish a trust fund, hereinafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden or nonsudden, or both] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amount of ________ [up to $1 million] per occurrence and ________ [up to $2 million] annual aggregate for sudden accidental occurrences and ________ [up to $3 million] per occurrence and ________ [up to $6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or ~~AGREEMENT~~agreement. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or ~~AGREEMENT~~agreement.

(b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

(A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert GRANTOR];

(2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert GRANTOR];

(4) Personal property in the care, custody, or control of [insert GRANTOR];

(5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the property, which is acceptable to the TRUSTEE, described in schedule B attached hereto. Such property and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR, any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

Section 4. Payment for Bodily Injury or Property Damage. The TRUSTEE shall satisfy a third-party liability claim by making payments from the FUND only upon receipt of one of the following documents:

(a) Certification from the GRANTOR and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR'S] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[____________].

[Signatures]
Grantor

[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

Section 5. Payments Comprising the FUND. Payments made to the TRUSTEE for the FUND shall consist of cash or securities acceptable to the TRUSTEE.

Section 6. TRUSTEE Management. The TRUSTEE shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the trustee's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the GRANTOR, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), may not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or a state government; and

(iii) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

~~Section 7. Commingling and Investment.~~**Section 7. Commingling and Investment.** The TRUSTEE is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the FUND to any common commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

Section 8. Express Powers of TRUSTEE. Without in any way limiting the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE shall at all times show that all such securities are part of the FUND;

(d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate corporate capacity, or in any other banking institution affiliated with the TRUSTEE, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the FUND.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this trust, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements of the TRUSTEE shall be paid from the FUND.

Section 10. Annual Valuations. The TRUSTEE shall annually, at least thirty days prior to the anniversary date of establishment of the FUND, furnish to the GRANTOR and to the DEPARTMENT a statement confirming the value of the trust. Any securities in the FUND shall be valued at market value as of no more than sixty days prior to the anniversary date of establishment of the FUND. The failure of the GRANTOR to object in writing to the TRUSTEE within ninety days after the statement has been furnished to the GRANTOR and the DEPARTMENT shall constitute a conclusively binding assent by the GRANTOR barring the GRANTOR from asserting any claim or liability against the TRUSTEE with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR with respect to any question arising as to the construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. TRUSTEE Compensation. The TRUSTEE shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

Section 13. Successor TRUSTEE. The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement shall not be effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE'S acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the trust in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the TRUSTEE. All orders, requests, and instructions by the GRANTOR to the TRUSTEE shall be in writing, signed by such persons as are designated in the attached exhibit A or such other designees as the GRANTOR may designate by amendments to exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S orders, requests, and instructions. All orders, requests, and instructions by the DEPARTMENT to the TRUSTEE shall be in writing, signed by the DEPARTMENT, or its designees, and the TRUSTEE shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR and/or the department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the TRUSTEE shall notify the GRANTOR of such payment and the amount(s) thereof within five working days. The GRANTOR shall, on or before the anniversary date of the establishment of the FUND following such notice, either make payments to the TRUSTEE in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the TRUSTEE that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the GRANTOR does not either make payments to the TRUSTEE or provide the TRUSTEE with such proof, the TRUSTEE shall within ten working days after the anniversary date of the establishment of the FUND provide a written notice of nonpayment to the DEPARTMENT.

Section 16. Amendment of AGREEMENT. This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE, and the ~~appropriate~~ DEPARTMENT ~~administrator~~ if the GRANTOR ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this AGREEMENT as provided in Section 16, this trust shall be irrevocable and shall continue until terminated at the written AGREEMENT of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE, and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the GRANTOR.

The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the GRANTOR or the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE shall be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

Section 19. Choice of Law. This AGREEMENT shall be administered, construed, and enforced according to the laws of the state of North Dakota.

Section 20. Interpretation. As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT shall not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subsection 13 of section 33.1-24-05-81, as such regulations were constituted on the date first above written.

[Signature of GRANTOR]
[Title]

Attest:
[Title]
[Seal]

[Signature of TRUSTEE]
Attest:
[Title]
[Seal]

b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a trust fund as specified in subsection 10 of section 33.1-24-05-79.

State of ________________________

County of ________________________

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

14. ~~Standby TRUST AGREEMENT~~

a. A standby TRUST AGREEMENT, as specified in subsection 8 of section 33.1-24-05-79, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Standby TRUST AGREEMENT

TRUST AGREEMENT, the "AGREEMENT", entered into as of [date] by and between [name of the owner or operator] a [name of a state] [insert "corporation", "partnership", "association", or "proprietorship"], the "GRANTOR", and [name of corporate TRUSTEE], [insert, "incorporated in the state of ________" or "a national bank"], the "TRUSTEE".

Whereas the North Dakota Department of Environmental Quality (DEPARTMENT) has established certain regulations applicable to the GRANTOR, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the GRANTOR has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the GRANTOR, acting through its duly authorized officers, has selected the TRUSTEE to be the TRUSTEE under this AGREEMENT, and the TRUSTEE is willing to act as TRUSTEE.

Now, therefore, the GRANTOR and the TRUSTEE agree as follows:

Section 1. Definitions. As used in this AGREEMENT:

(a) The term "GRANTOR" means the owner or operator who enters into this AGREEMENT and any successors or assigns of the GRANTOR.

(b) The term "TRUSTEE" means the TRUSTEE who enters into this AGREEMENT and any successor TRUSTEE.

Section 2. Identification of Facilities. This AGREEMENT pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA identification number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this AGREEMENT].

Section 3. Establishment of FUND. The GRANTOR and the TRUSTEE hereby establish a standby trust fund, hereafter the "FUND", for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of_______ [up to $1 million] per occurrence and ______ [up to $2 million] annual aggregate for sudden accidental occurrences and ______[up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the FUND is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert GRANTOR] is obligated to pay damages by reason of the assumption of liability in a contract or ~~AGREEMENT~~agreement. This exclusion does not apply to liability for damages that [insert GRANTOR] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert GRANTOR] under a workers' compensation, disability benefits, or unemployment compensation law, or any similar law.

(c) Bodily injury to:

(1) An employee of [insert GRANTOR] arising from, and in the course of, employment by [insert GRANTOR]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert GRANTOR].

This exclusion applies:

(A) Whether [insert GRANTOR] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert GRANTOR];

(2) Premises that are sold, given away, or abandoned by [insert GRANTOR] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert GRANTOR];

(4) Personal property in the care, custody, or control of [insert GRANTOR];

(5) That particular part of real property on which [insert GRANTOR] or any contractors or subcontractors working directly or indirectly on behalf of [insert GRANTOR] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the FUND shall be considered [insert "primary" or "excess"] coverage.

The FUND is established initially as consisting of the proceeds of the letter of credit deposited into the FUND. Such proceeds and any other property subsequently transferred to the TRUSTEE is referred to as the FUND, together with all earnings and profits thereon, less any payments or distributions made by the TRUSTEE pursuant to this AGREEMENT. The FUND shall be held by the TRUSTEE, IN TRUST, as hereinafter provided. The TRUSTEE shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the GRANTOR, any payments necessary to discharge any liabilities of the GRANTOR established by the DEPARTMENT.

Section 4. Payment for Bodily Injury or Property Damage. The TRUSTEE shall satisfy a third-party liability claim by drawing on the letter of credit described in schedule B and by making payments from the FUND only upon receipt of one of the following documents:

(a) Certification from the GRANTOR and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

~~Certification of Valid Claim~~**Certification of Valid Claim**

The undersigned, as parties [insert GRANTOR] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [GRANTOR'S] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $ [____________].

[Signatures] ________________

Grantor _________________________

[Signatures] ________________

Claimant(s) _____________________

(b) A valid final court order establishing a judgment against the GRANTOR for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the GRANTOR'S facility or group of facilities.

Section 5. Payments Comprising the FUND. Payments made to the TRUSTEE for the FUND shall consist of the proceeds from the letter of credit drawn upon by the TRUSTEE in accordance with the requirements of subsection 11 of section 33.1-24-05-81 and Section 4 of this AGREEMENT.

Section 6. TRUSTEE Management. The TRUSTEE shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the GRANTOR may communicate in writing to the TRUSTEE from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the FUND, the TRUSTEE shall discharge the trustee's duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the GRANTOR, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The TRUSTEE is authorized to invest the FUND in time or demand deposits of the TRUSTEE, to the extent insured by an agency of the federal or a state government; and

(iii) The TRUSTEE is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The TRUSTEE is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the FUND to any common, commingled, or collective trust fund created by the TRUSTEE in which the FUND is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the TRUSTEE. The TRUSTEE may vote such shares in its discretion.

Section 8. Express Powers of TRUSTEE. Without in any way limiting the powers and discretions conferred upon the TRUSTEE by the other provisions of this AGREEMENT or by law, the TRUSTEE is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the TRUSTEE shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the FUND in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the TRUSTEE in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof, with a federal reserve bank, but the books and records of the TRUSTEE shall at all times show that all such securities are part of the FUND;

(d) To deposit any cash in the FUND in interest-bearing accounts maintained or savings certificates issued by the TRUSTEE, in its separate corporate capacity, or in any other banking institution affiliated with the TRUSTEE, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the FUND.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the FUND and all brokerage commissions incurred by the FUND shall be paid from the FUND. All other expenses incurred by the TRUSTEE in connection with the administration of this trust, including fees for legal services rendered to the TRUSTEE, the compensation of the TRUSTEE to the extent not paid directly by the GRANTOR, and all other proper charges and disbursements to the TRUSTEE shall be paid from the FUND.

Section 10. Advice of Counsel. The TRUSTEE may from time to time consult with counsel, who may be counsel to the GRANTOR, with respect to any question arising as to the construction of this AGREEMENT or any action to be taken hereunder. The TRUSTEE shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. TRUSTEE Compensation. The TRUSTEE shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the GRANTOR.

Section 12. Successor TRUSTEE. The TRUSTEE may resign or the GRANTOR may replace the TRUSTEE, but such resignation or replacement shall not be effective until the GRANTOR has appointed a successor TRUSTEE and this successor accepts the appointment. The successor TRUSTEE shall have the same powers and duties as those conferred upon the TRUSTEE hereunder. Upon the successor TRUSTEE'S acceptance of the appointment, the TRUSTEE shall assign, transfer, and pay over to the successor TRUSTEE the funds and properties then constituting the FUND. If for any reason the GRANTOR cannot or does not act in the event of the resignation of the TRUSTEE, the TRUSTEE may apply to a court of competent jurisdiction for the appointment of a successor TRUSTEE or for instructions. The successor TRUSTEE shall specify the date on which it assumes administration of the trust in a writing sent to the GRANTOR, the DEPARTMENT, and the present TRUSTEE by certified mail ten days before such change becomes effective. Any expenses incurred by the TRUSTEE as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 13. Instructions to the TRUSTEE. All orders, requests, certifications of valid claims, and instructions to the TRUSTEE shall be in writing, signed by such persons as are designated in the attached exhibit A, or such other designees as the GRANTOR may designate by amendments to exhibit A. The TRUSTEE shall be fully protected in acting without inquiry in accordance with the GRANTOR'S orders, requests, and instructions. The TRUSTEE shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the GRANTOR or the DEPARTMENT hereunder has occurred. The TRUSTEE shall have no duty to act in the absence of such orders, requests, and instructions from the GRANTOR and/or the DEPARTMENT, except as provided for herein.

Section 14. Amendment of AGREEMENT. This AGREEMENT may be amended by an instrument in writing executed by the GRANTOR, the TRUSTEE and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT if the GRANTOR ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this AGREEMENT as provided in Section 14, this trust shall be irrevocable and shall continue until terminated at the written ~~AGREEMENT~~agreement of the GRANTOR, the TRUSTEE, and the DEPARTMENT, or by the TRUSTEE and the DEPARTMENT, if the GRANTOR ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be paid to the GRANTOR.

The DEPARTMENT will agree to termination of the trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and Indemnification. The TRUSTEE shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the GRANTOR and the DEPARTMENT issued in accordance with this AGREEMENT. The TRUSTEE shall be indemnified and saved harmless by the GRANTOR or from the trust fund, or both, from and against any personal liability to which the TRUSTEE may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the GRANTOR fails to provide such defense.

Section 17. Choice of Law. This AGREEMENT shall be administered, construed, and enforced according to the laws of the state of North Dakota.

Section 18. Interpretation. As used in this AGREEMENT, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this AGREEMENT shall not affect the interpretation or the legal efficacy of this AGREEMENT.

In Witness Whereof the parties have caused this AGREEMENT to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this AGREEMENT is identical to the wording specified in subsection 14 of section 33.1-24-05-81 as such regulations were constituted on the date first above written.

[Signature of GRANTOR]

[Title]

Attest:

[Title]

[Seal]

[Signature of TRUSTEE]

Attest:

[Title]

[Seal]

b. The following is an example of the certification of acknowledgment which must accompany the TRUST AGREEMENT for a standby trust fund as specified in subsection 8 of section 33.1-24-05-79. State requirements may differ on the proper content of this acknowledgment.

State of ________________________

County of ________________________

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of notary public]

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-05-282. Treatment standards expressed as specified technologies.

NOTE: For the requirements previously found in this section in Table 2 - Technology-Based Standards By Resource Conservation Recovery Act Waste Code, and Table 3 - Technology-Based Standards for Specific Radioactive Hazardous Mixed Waste, refer to section 33.1-24-05-280.

1. The following wastes in the table in section 33.1-24-05-280 "Treatment Standards for Hazardous Wastes", for which standards are expressed as a treatment method rather than a concentration level, must be treated using the technology or technologies specified in the table entitled "Technology Codes and Description of Technology-Based Standards" in this section.

Table 1. Technology Codes and Description of Technology-Based Standards

Technology Code	Description of Technology-Based Standards
ADGAS:	Venting of compressed gases into an absorbing or reacting media (for example, solid or liquid) venting can be accomplished through physical release utilizing valves/piping, physical penetration of the container, and/or penetration through detonation.
AMLGM:	Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic reagents, such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semi-solid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.
BIODG:	Biodegradation of organics or nonmetallic inorganics (for example,

Table 1. Technology Codes and Description of Technology-Based Standards

Technology Code	Description of Technology-Based Standards
	degradable inorganics that contain the elements of phosphorus, nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic carbon ~~can~~ often can be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).
CARBN:	Carbon adsorption (granulated or powdered) of nonmetallic inorganics, organo-metallics, and/or organic constituents, operated such that a surrogate compound or indicator parameter has not undergone breakthrough (for example, total organic carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater residues). Breakthrough occurs when the carbon has become saturated with the constituent (or indicator parameter) and substantial change in adsorption rate associated with that constituent occurs.
CHOXD:	Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) hypochlorite (e.g. bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV-assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permangantes; and/or (9) other oxidizing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues). Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.
CHRED:	Chemical reduction utilizing the following reducing reagents (or waste reagents) or combinations of reagents: (1) sulfur dioxide; (2) sodium, potassium, or alkali salts or sulfites, bisulfites, metabisulfites, and polyethylene glycols (for example, NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic halogens can often be used as an indicator parameter for the reduction of many halogenated organic constituents that cannot be ~~directly~~ analyzed directly in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.
CMBST:	High temperature organic destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements of sections 33.1-24-05-144 through 33.1-24-05-159, sections 33.1-24-05-525 through 33.1-24-05-549, or subsection 5 of section 33.1-24-06-16, and in other units operated in accordance with applicable technical operating requirements; and certain noncombustive technologies, such as the catalytic extraction process.
DEACT:	Deactivation to remove the hazardous characteristics of a waste due to

Table 1. Technology Codes and Description of Technology-Based Standards

Technology Code	Description of Technology-Based Standards
	its ignitability, corrosivity, and/or reactivity.
FSUBS:	Fuel substitution in units operated in accordance with applicable technical operating requirements.
HLVIT:	Vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
IMERC:	Incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of sections 33.1-24-05-144 through 33.1-24-05-159. All wastewater and nonwastewater residues derived from this process ~~must~~ then must comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (for example, high or low mercury subcategories).
INCIN:	Incineration in units operated in accordance with the technical operating requirements of sections 33.1-24-05-144 through 33.1-24-05-159.
LLEXT:	Liquid-liquid extraction (often referred to as solvent extraction) of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate (extracted liquid waste) proportionately low in organics that must undergo further treatment as specified in the standard.
MACRO:	Macroencapsulation with surface coating materials such as polymeric organics (e.g. resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to section 33.1-24-01-04.
NEUTR:	Neutralization with the following reagents (or waste reagents) or combinations of reagents: (1) acids; (2) bases; or (3) water (including wastewaters) resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.
NLDBR:	No land disposal based on recycling.
POLYM:	Formation of complex high-molecular weight solids through polymerization of monomers in high-total organic carbon D001 nonwastewaters which are chemical components in the manufacture of plastics.
PRECP:	Chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, ~~flourides~~fluorides, or phosphates. The following reagents (or waste reagents) are typically used alone or in combination: (1) lime (for example, containing oxides and/or hydroxides of calcium and/or magnesium); (2) caustic (for example, sodium and/or potassium hydroxides); (3) soda ash (for example, sodium carbonate); (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional flocculating, coagulation, or similar reagents/processes that

Table 1. Technology Codes and Description of Technology-Based Standards

Technology Code	Description of Technology-Based Standards
	enhance sludge dewatering characteristics are not precluded from use.
RBERY:	Thermal recovery of Beryllium.
RCGAS:	Recovery/reuse of compressed gases, including techniques such as reprocessing of the gases for reuse/resale; filtering/adsorption of impurities; remixing for direct reuse or resale; and use of the gas as a fuel source.
RCORR:	Recovery of acids or bases utilizing one or more of the following recovery technologies: (1) distillation (for example, thermal concentration); (2) ion exchange; (3) resin or solid adsorption; (4) reverse osmosis; and/or (5) incineration for the recovery of acid - Note: This does not preclude the use of other physical phase separation or concentration techniques, such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RLEAD:	Thermal recovery of lead in secondary lead smelters.
RMERC:	Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit (or facility) must be subject to one or more of the following: (a) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury; (b) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or (c) a state permit that establishes emission limitations (within meaning of section 302 of the Clean Air Act) for mercury. All wastewater and nonwastewater residues derived from this process ~~must~~ then must comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (for example, high or low mercury subcategories).
RMETL:	Recovery of metals or inorganics utilizing one or more of the following direct physical/removal technologies: (1) ion exchange; (2) resin or solid (for example, zeolites) adsorption; (3) reverse osmosis; (4) chelation/solvent extraction; (5) freeze crystallization; (6) ultrafiltration; and/or (7) simple precipitation (for example, crystallization) - Note: This does not preclude the use of other physical phase separation or concentration techniques, such as decantation, filtration (including ultrafiltration), and centrifugation, ~~when~~if used in conjunction with the above listed recovery technologies.
RORGS:	Recovery of organics utilizing one or more of the following technologies: (1) Distillation; (2) thin film evaporation; (3) steam stripping; (4) carbon adsorption; (5) critical fluid extraction; (6) liquid-liquid extraction; (7) precipitation/crystallization (including freeze crystallization); or (8) chemical phase separation techniques (for example, addition of acids, bases, demulsifiers, or similar chemicals) - Note: This does not preclude the use of other physical phase separation techniques, such as a decantation, filtration (including ultrafiltration), and centrifugation, ~~when~~if used in conjunction with the above listed recovery technologies.
RTHRM:	Thermal recovery of metals or inorganics from nonwastewaters in units

Table 1. Technology Codes and Description of Technology-Based Standards

Technology Code	Description of Technology-Based Standards
	identified as industrial furnaces according to subdivisions a, f, g, k, and l of subsection 45 of section 33.1-24-01-04 under the definition of "industrial furnaces".
RZINC:	Resmelting in high temperature metal recovery units for the purpose of recovery of zinc.
STABL:	Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (for example, fly ash and cement kiln dust) - This does not preclude the addition of reagents (for example, iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.
SSTRP:	Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, as well as temperature and pressure ranges, have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit, such as the number of separation stages and the internal column design, thus resulting in a condensed extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard.
WETOX:	Wet air oxidation performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (for example, total organic carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues).
WTRRX:	Controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions as well as precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Note 1: ~~When~~If a combination of these technologies (for example, a treatment train) is specified as a single treatment standard, the order of application is specified in section 33.1-24-05-282, table 2 by indicating the five letter technology code that must be applied first, then the designation "fb" (an abbreviation for "followed by"), then the five letter technology code for the technology that must be applied next, and so on.

Note 2: ~~When~~If more than one technology (or treatment train) are specified as alternative treatment standards, the five letter technology codes (or the treatment trains) are separated by a semicolon(;) with the last technology preceded by the word "or". This indicates that any one of these best demonstrated available technologies or treatment trains ~~can~~may be used for compliance with the standard.

2. Any person may submit an application to the administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in subsections 1, 3, and 4 for wastes or specified in table 1 of section 33.1-24-05-285 for hazardous debris. The applicant must submit information demonstrating that the applicant's treatment method is in compliance with federal, state, and local

requirements and is protective of human health and the environment. On the basis of such information and any other available information, the administrator may approve the use of the alternative treatment method if the administrator finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in subsections 1, 3, and 4 for wastes or in table 1 of section 33.1-24-05-285 for hazardous debris. Any approval must be stated in writing and may contain such provisions and conditions as the administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

3. As an alternative to the otherwise applicable sections 33.1-24-05-280 through 33.1-24-05-289 treatment standards, lab packs are eligible for land disposal provided the following requirements are met:

   a. The lab packs comply with the applicable provisions of section 33.1-24-05-185;

   b. The lab pack does not contain any of the wastes listed in appendix VIII of chapter 33.1-24-05;

   c. The lab packs are incinerated in accordance with the requirements of sections 33.1-24-05-144 through 33.1-24-05-159; and

   d. Any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, and D011 are treated in compliance with the applicable treatment standards specified for such wastes in sections 33.1-24-05-280 through 33.1-24-05-289.

4. Radioactive hazardous mixed wastes are subject to the treatment standards in section 33.1-24-05-280. ~~Where~~If treatment standards are specified for radioactive mixed wastes in the Table of Treatment Standards, those treatment standards will govern. ~~Where~~If there is no specific treatment standard for radioactive mixed waste, the treatment standard for the hazardous waste (as designated by environmental protection agency/state waste code) applies. Hazardous debris containing radioactive waste is subject to the treatment standards specified in section 33.1-24-05-285.

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-05-311. Applicability.

1. A health care facility that is a very small quantity generator~~ when~~, counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its nonpharmaceutical hazardous waste, remains subject to section 33.1-24-03-26 and is not subject to sections 33.1-24-05-310 through 33.1-24-05-320, except for sections 33.1-24-05-315 and 33.1-24-05-317, and the optional provisions of section 33.1-24-05-314.

2. A health care facility that is a very small quantity generator~~ when~~, counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its nonpharmaceutical hazardous waste, ~~has the option of complying~~may comply with subsection 4 for the management of its hazardous waste pharmaceuticals as an alternative to complying with section 33.1-24-03-26 and the optional provisions of section 33.1-24-05-314.

3. A health care facility or reverse distributor remains subject to all applicable hazardous waste regulations with respect to the management of its nonpharmaceuticals hazardous waste.

4. With the exception of health care facilities identified in subsection 1, a health care facility is subject to the following in lieu of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-309,

33.1-24-05-400 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819:

a. Sections 33.1-24-05-312 and 33.1-24-05-315 through 33.1-24-05-318 with respect to the management of:

(1) Noncreditable hazardous waste pharmaceuticals; and

(2) Potentially creditable hazardous waste pharmaceuticals if they are not destined for a reverse distributor.

b. Subsection 1 of section 33.1-24-05-312, section 33.1-24-05-313, sections 33.1-24-05-315 through 33.1-24-05-317, and section 33.1-24-05-319 with respect to the management of potentially creditable hazardous waste pharmaceuticals that are prescription pharmaceuticals and are destined for a reverse distributor.

5. A reverse distributor is subject to sections 33.1-24-05-310 through 33.1-24-05-320 in lieu of chapters 33.1-24-03 and 33.1-24-04, and sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-309, 33.1-24-05-400 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819 with respect to the management of hazardous waste pharmaceuticals.

6. Hazardous waste pharmaceuticals generated or managed by entities other than health care facilities and reverse distributors, e.g., pharmaceutical manufacturers and reverse logistics centers, are not subject to sections 33.1-24-05-310 through 33.1-24-05-320. Other generators are subject to chapter 33.1-24-03 for the generation and accumulation of hazardous wastes, including hazardous waste pharmaceuticals.

7. The following are not subject to chapters 33.1-24-01 through 33.1-24-07 except as specified:

a. Pharmaceuticals that are not solid waste, as defined by section 33.1-24-02-02, ~~because~~if they are legitimately used or reused, e.g., lawfully donated for their intended purpose, or reclaimed.

b. Over-the-counter pharmaceuticals, dietary supplements, or homeopathic drugs that are not solid wastes as defined by section 33.1-24-02-02 ~~because~~if they have a reasonable expectation of being legitimately used or reused, e.g., lawfully redistributed for their intended purpose, or reclaimed.

c. Pharmaceuticals being managed in accordance with a recall strategy that has been approved by the food and drug administration in accordance with title 21, Code of Federal Regulations, part 7, subpart C. This subpart ~~does apply~~applies to the management of the recalled hazardous waste pharmaceuticals after the food and drug administration approves the destruction of the recalled items.

d. Pharmaceuticals being managed in accordance with a recall corrective action plan that has been accepted by the consumer product safety commission in accordance with title 16, Code of Federal Regulations, part 1115, as effective September 1, 1992. Sections 33.1-24-05-310 through 33.1-24-05-320 ~~do not~~ apply to the management of the recalled hazardous waste pharmaceuticals after the consumer product safety commission approves the destruction of the recalled items.

e. Pharmaceuticals stored according to a preservation order, or during an investigation or judicial proceeding until after the preservation order, investigation, or judicial proceeding, has concluded or a decision is made to discard the pharmaceuticals.

f. Investigational new drugs for which an investigational new drug application is in effect in accordance with the food and drug administration's regulations in title 21, Code of Federal Regulations, part 312. Sections 33.1-24-05-310 through 33.1-24-05-320 apply to the management of the investigational new drug after the decision is made to discard the investigational new drug or the food and drug administration approves the destruction of the investigational new drug, if the investigational new drug is a hazardous waste.

g. Household waste pharmaceuticals, including those that have been collected by an authorized collector, as defined by the drug enforcement administration, provided the authorized collector complies with the conditional exemption in subdivision a of subsection 1 of section 33.1-24-05-316 and subsection 2 of section 33.1-24-05-316.

History: Effective July 1, 2021; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-05-423. Standards - Compressors.

1. Each compressor must be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in subsections 8 and 9.

2. Each compressor seal system as required in subsection 1 must be:

   a. Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure;

   b. Equipped with the barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of section 33.1-24-05-430; or

   c. Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

3. The barrier fluid must not be a hazardous waste with organic concentrations ten percent or greater by weight.

4. Each barrier fluid system as described in subsections 1 through 3 must be equipped with a sensor that would detect failure of the sealed system, barrier fluid system, or both.

5. ~~Checks.~~

   a. Each sensor as required in subsection 4 must be checked daily or must be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plantsite, in which case the sensor must be checked daily.

   b. The owner or operator shall determine, based on design consideration and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

6. If the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion determined under subdivision b of subsection 5, a leak is detected.

7. ~~Leaks.~~

   a. ~~When~~If a leak is detected, it must be repaired as soon as practicable, but not later than fifteen calendar days after it is detected, except as provided in section 33.1-24-05-429.

b. A first attempt at repair, for example, tightening the packing gland, must be made no later than five calendar days after each leak is detected.

8. A compressor is exempt from the requirements of subsections 1 and 2 if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of section 33.1-24-05-430 except as provided in subsection 9.

9. Any compressor that is designed, as described in subdivision b of subsection 7 of section 33.1-24-05-434, for no detectable emissions as indicated by an instrument reading of less than five hundred parts per million above background is exempt from the requirements of subsections 1 through 8 if the compressor:

   a. Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than five hundred parts per million above background, as measured by the method specified in subsection 3 of section 33.1-24-05-433~~.~~; and

   b. Is tested for compliance with subdivision a of subsection 9 initially upon designation, annually, and other times as requested by the department.

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-05-451. Definitions.

As used in sections 33.1-24-05-450 through 33.1-24-05-474, all terms ~~shall~~ have the meaning given to them as defined below or as defined elsewhere in this article.

1. "Average volatile organic concentration" or "average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of section 33.1-24-05-454.

2. "Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (for example, a sampling port cap), manually operated (for example, a hinged access lid or hatch), or automatically operated (for example, a spring-loaded pressure relief valve).

3. "Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

4. "Cover" means a device that provides a continuous barrier over the hazardous waste managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

5. "Enclosure" means any structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

6. "External floating roof" means a pontoon or double-deck type cover that rests on the surface of a material managed in a tank with no fixed roof.

7. "Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

8. "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

9. "Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

10. "Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

11. "In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals at 20 degrees Celsius; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kilopascals at 20 degrees Celsius is equal to or greater than twenty percent by weight.

12. "Internal floating roof" means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

13. "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

14. "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

15. "Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (for example, temperature, agitation, pH effects of combining wastes, etc.) reasonably expected to occur in the tank. For the purpose of sections 33.1-24-05-450 through 33.1-24-05-474, maximum organic vapor pressure is determined using the procedures specified in subsection 3 of section 33.1-24-05-453.

16. "Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

17. "No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in subsection 4 of section 33.1-24-05-453.

18. "Point of waste origination" means as follows:

    a. ~~When~~If the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in chapter 33.1-24-02.

Note: In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

b. ~~When~~If neither the facility owner ~~and~~nor operator are ~~not~~ the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

19. "Point of waste treatment" means the point where a hazardous waste to be treated in accordance with subdivision b of subsection 3 of section 33.1-24-05-452 exits the treatment process. Any waste determination ~~shall~~must be made before the waste is conveyed, handled, or otherwise managed in a manner that allows the waste to volatilize to the atmosphere.

20. "Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of sections 33.1-24-05-450 through 33.1-24-05-474, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of ~~flamable~~flammable, ignitable, explosive, reactive, or hazardous materials.

21. "Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

22. "Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous waste in the unit and the bottom of the seal.

23. "Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous waste expressed in terms of parts per million as determined by direct measurement or by knowledge of the waste in accordance with the requirements of section 33.1-24-05-453. For the purpose of determining the VO concentration of a hazardous waste, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^6 atmospheres/gram-mole/m^3) at 25 degrees Celsius must be included. Appendix VI presents a list of compounds known to have a Henry's law constant value less than the cutoff level.

24. "Waste determination" means performing all applicable procedures in accordance with the requirements of section 33.1-24-05-454 to determine whether a hazardous waste meets standards specified in sections 33.1-24-05-450 through 33.1-24-05-474. Examples of a waste determination include performing the procedures in accordance with the requirements of section 33.1-24-05-454 to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

25. "Waste stabilization process" means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095B (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846 as incorporated by reference in section 33.1-24-01-05. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification". This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-05-457. Standards - Closed-vent systems and control devices.

1. This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of sections 33.1-24-05-450 through 33.1-24-05-474.

2. The closed-vent system ~~shall~~must meet the following requirements:

   a. The closed-vent system ~~shall~~must route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in subsection 3.

   b. The closed-vent system ~~shall~~must be designed and operated in accordance with the requirements specified in subsection 11 of section 33.1-24-05-403.

   c. ~~In the case when~~If the closed-vent system includes bypass devices that ~~could~~may be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device ~~shall~~must be equipped with either a flow indicator as specified in paragraph 1 or a seal or locking device as specified in paragraph 2. For the purpose of complying with this subdivision, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

      (1) If a flow indicator is used to comply with this subdivision, the indicator ~~shall~~must be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this subdivision, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

      (2) If a seal or locking device is used to comply with this subdivision, the device ~~shall~~must be placed on the mechanism by which the bypass device position is controlled (for example, valve handle, damper lever) ~~when~~if the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

   d. The closed-vent system ~~shall~~must be inspected and monitored by the owner or operator in accordance with the procedure specified in subsection 12 of section 33.1-24-05-403.

3. The control device ~~shall~~must meet the following requirements:

a. The control device ~~shall~~must be one of the following devices:

(1) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least ninety-five percent by weight;

(2) An enclosed combustion device designed and operated in accordance with the requirements of subsection 3 of section 33.1-24-05-403; or

(3) A flare designed and operated in accordance with the requirements of subsection 4 of section 33.1-24-05-403.

b. The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs 1 through 6.

(1) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph 1, 2, or 3 of subdivision a, as applicable, ~~shall~~may not exceed two hundred forty hours per year.

(2) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during periods of planned routine maintenance.

(3) The specifications and requirements in paragraphs 1, 2, and 3 of subdivision a for control devices do not apply during a control device system malfunction.

(4) The owner or operator shall demonstrate compliance with the requirements of paragraph 1 (for example, planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraph 1, 2, or 3 of subdivision a, as applicable, shall not exceed two hundred forty hours per year) by recording the information specified in paragraph 5 of subdivision a of subsection 5 of section 33.1-24-05-459.

(5) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(6) The owner or operator shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction (for example, periods when the control device is not operating or not operating normally) ~~except in cases when~~unless it is necessary to vent the gases, vapors, or fumes, or any combination, to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

c. The owner or operator using a carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the following requirements:

(1) Following the initial startup of the control device, all activated carbon in the control device ~~shall~~must be replaced with fresh carbon on a regular basis in accordance with the requirements of subsection 7 or 8 of section 33.1-24-05-403.

(2) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of subsection 14 of section 33.1-24-05-403, regardless of the average volatile organic concentration of the carbon.

d. An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, ~~condensor~~condenser, or carbon adsorption system to comply with subdivision a shall operate and maintain the control device in accordance with the requirements of subsection 10 of section 33.1-24-05-403.

e. The owner or operator shall demonstrate that a control device achieves the performance requirements of subdivision a as follows:

(1) An owner or operator shall demonstrate using either a performance test as specified in paragraph 3 or a design analysis as specified in paragraph 4 the performance of each control device except for the following:

(a) A flare;

(b) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(c) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(d) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under chapter 33.1-24-06 and has designed and operates the unit in accordance with the requirements of sections 33.1-24-05-525 through 33.1-24-05-549; or

(e) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with sections 33.1-24-05-525 through 33.1-24-05-549.

(2) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in subsection 5 of section 33.1-24-05-403.

(3) For a performance test conducted to meet the requirements of paragraph 1, the owner or operator shall use the test methods and procedures specified in subdivisions a through d of subsection 3 of section 33.1-24-05-404.

(4) For a design analysis conducted to meet the requirements of paragraph 1, the design analysis shall meet the requirements specified in paragraph 3 of subdivision d of subsection 2 of section 33.1-24-05-405.

(5) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of subdivision a based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

f. If the owner or operator and the department do not agree on a demonstration of control device performance using a design analysis, then the disagreement ~~shall~~must be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph 3 of subdivision e. The department may choose to have an authorized representative observe the performance test.

g. The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in subdivision b of subsection 6 and subsection 12 of section 33.1-24-05-403. The readings from each monitoring device required by subdivision b of subsection 6 of section 33.1-24-05-403

~~shall~~must be inspected at least once each operating day to check control device operation. Any necessary corrective measures ~~shall~~must be~~ immediately~~ implemented immediately to ensure the control device is operated in compliance with the requirements of section 33.1-24-05-457.

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

33.1-24-05-525. Applicability to hazardous waste burned in boilers and industrial furnaces.

1. The regulations of sections 33.1-24-05-525 through 33.1-24-05-549 apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in section 33.1-24-01-04) irrespective of the purpose of burning or processing, except as provided by subsections 2, 3, 4, 7, and 8. In sections 33.1-24-05-525 through 33.1-24-05-549, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of sections 33.1-24-05-529 through 33.1-24-05-532 apply to facilities operating under interim status or under a hazardous waste operating permit as specified in sections 33.1-24-05-527 and 33.1-24-05-528.

2. ~~Integration of the maximum achievable control technology standards.~~

   a. Except as provided by subdivisions b through d, the standards ~~of~~in sections 33.1-24-05-525 through 33.1-24-05-549 do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to hazardous waste permit requirements after October 12, 2005; or no longer apply ~~when~~if an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology requirements of 40 CFR part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the department a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE, as amended on June 1, 2026. Nevertheless, even after this demonstration of compliance with the maximum achievable control technology standards, hazardous waste permit conditions that were based on the standards of sections 33.1-24-05-525 through 33.1-24-05-549 ~~will~~must continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

   b. The following standards continue to apply:

      (1) If a permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33.1-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, subdivision a of subsection 5 of section 33.1-24-05-527 requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and paragraph 3 of subdivision b of subsection 5 of section 33.1-24-05-527 requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;

      (2) The closure requirements of subdivision k of subsection 5 of section 33.1-24-05-527 and subsection 12 of section 33.1-24-05-528;

      (3) The standards for direct transfer of section 33.1-24-05-536;

      (4) The standards for regulation of residues of section 33.1-24-05-537; and

(5) The applicable requirements of sections 33.1-24-05-01 through 33.1-24-05-88, 33.1-24-05-420 through 33.1-24-05-474, and subsection 5 of section 33.1-24-06-16.

c. The owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR section 63.2~~ and the owner or operator~~, who elects not to comply with the emission standards under 40 CFR sections 63.1216, 63.1217, and 63.1218 for particulate matter, semivolatile and low volatile metals, and total chlorine, ~~the owner or operator~~ also remains subject to:

(1) Section 33.1-24-05-530 - Standards to control particulate matter;

(2) Section 33.1-24-05-531 - Standards to control metals emissions, except for mercury; and

(3) Section 33.1-24-05-532 - Standards to control hydrogen chloride and chlorine gas.

d. The particulate matter standard of section 33.1-24-05-530 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under 40 CFR sections 63.1216(e) and 63.1217(e).

3. The following hazardous wastes and facilities are not subject to regulation under sections 33.1-24-05-525 through 33.1-24-05-549:

a. Used oil burned for energy recovery that is also hazardous waste solely because it exhibits a characteristic of hazardous waste identified in sections 33.1-24-02-10 through 33.1-24-02-14. Such used oil is subject to regulation under sections 33.1-24-05-600 through 33.1-24-05-689;

b. Gas recovered from hazardous or solid waste landfills ~~when~~if such gas is burned for energy recovery;

c. Hazardous wastes that are exempt from regulation under section 33.1-24-02-04 and paragraphs 4 through 6 of subdivision c of subsection 1 of section 33.1-24-02-06, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under section 33.1-24-03-26; and

d. Coke ovens, if the only hazardous waste burned is hazardous waste number K087, decanter tank tar sludge from coking operations.

4. Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under sections 33.1-24-05-525 through 33.1-24-05-549, except for sections 33.1-24-05-526 and 33.1-24-05-537.

a. To be exempt from sections 33.1-24-05-527 through 33.1-24-05-536, an owner or operator of a metal recovery furnace or mercury recovery furnace ~~must~~shall comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, ~~must~~shall comply with the requirements of subdivision c, and owners or operators of lead recovery furnaces that are subject to regulation under the secondary lead smelting national emission standard for hazardous air pollutants ~~must~~shall comply with the requirements of subsection 8:

(1) Provide a one-time written notice to the department indicating the following:

(a) The owner or operator claims exemption under this subsection;

(b) The hazardous waste is burned solely for metal recovery consistent with the provisions of subdivision b;

(c) The hazardous waste contains recoverable levels of metals; and

(d) The owner or operator ~~will~~shall comply with the sampling and analysis and recordkeeping requirements of this subsection;

(2) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this subsection by using appropriate methods; and

(3) Maintain at the facility for at least three years records to document compliance with the provisions of this subsection, including limits on levels of toxic organic constituents and British thermal unit value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.

b. A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:

(1) The hazardous waste has a total concentration of organic compounds listed in appendix V of chapter 33.1-24-02 exceeding five hundred parts per million by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the five hundred parts per million limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the five hundred parts per million limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph 3 of subdivision a; or

(2) The hazardous waste has a heating value of five thousand British thermal units per pound or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the five thousand British thermal units per pound limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the five thousand British thermal units per pound limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by paragraph 3 of subdivision a.

c. To be exempt from sections 33.1-24-05-527 through 33.1-24-05-536, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the secondary lead smelting national emission standards for hazardous air pollutants), or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, ~~must~~shall provide a one-time written notice to the department identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this subdivision or subdivision a. The owner or operator ~~must~~shall comply with the requirements of subdivision a for those wastes claimed to be exempt under that subdivision and ~~must~~shall comply with the requirements below for those wastes claimed to be exempt under subdivision a and must comply with the requirements below for those wastes claimed to be exempt under this subdivision.

(1) The hazardous wastes listed in appendices XXVI, XXVII, and XXVIII of chapter 33.1-24-05, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of subdivision a, provided that:

(a) A waste listed in appendix XXVI must contain recoverable levels of lead, a waste listed in appendix XXVII must contain recoverable levels of nickel or chromium, a waste listed in appendix XXVIII must contain recoverable levels of mercury and contain less than five hundred parts per million organic constituents listed in appendix V of chapter 33.1-24-02 and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal;

(b) The waste does not exhibit the toxicity characteristic of section 33.1-24-02-14 for an organic constituent;

(c) The waste is not a hazardous waste listed in sections 33.1-24-02-15 through 33.1-24-02-19 because it is listed for an organic constituent as identified in appendix IV of chapter 33.1-24-02; and

(d) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of subdivision c and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis ~~shall~~must be conducted according to paragraph 2 of subdivision a and records to document compliance with subdivision c shall be kept for at least three years.

(2) The department may decide on a case-by-case basis that the toxic organic constituents in a material listed in appendix XXVI, XXVII, or XXVIII of chapter 33.1-24-05 that contains a total concentration of more than five hundred parts per million toxic organic compounds listed in appendix V of chapter 33.1-24-02, may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of sections 33.1-24-05-525 through 33.1-24-05-549. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace ~~will~~must become subject to the requirements of sections 33.1-24-05-525 through 33.1-24-05-549 ~~when~~if burning that material. In making the hazard determination, the department ~~will~~shall consider the following factors:

(a) The concentration and toxicity of organic constituents in the material;

(b) The level of destruction of toxic organic constituents provided by the furnace; and

(c) Whether the acceptable ambient levels established in appendix XIX or XX of chapter 33.1-24-05 may be exceeded for any toxic organic compound that may be emitted based on dispersion modeling to predict the maximum annual average offsite ground level concentration.

5. The standards for direct transfer operations under section 33.1-24-05-536 apply only to facilities subject to the permit standards of section 33.1-24-05-527 or the interim status standards of section 33.1-24-05-528.

6. The management standards for residues under section 33.1-24-05-537 apply to any boiler or industrial furnace burning hazardous waste.

7. Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, ~~irridium~~iridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under sections 33.1-24-05-525 through 33.1-24-05-549, except for section 33.1-24-05-537. To be exempt from sections 33.1-24-05-526 through 33.1-24-05-536, an owner or operator ~~must~~shall:

   a. Provide a one-time written notice to the department indicating the following:

      (1) The owner or operator claims exemption under this subsection;

      (2) The hazardous waste is burned for legitimate recovery of precious metal; and

      (3) The owner or operator ~~will~~shall comply with the sampling and analysis and recordkeeping requirements of this subsection;

   b. Sample and analyze the hazardous waste as necessary to document that the waste contains economically significant amounts of the metals and that the treatment recovers economically significant amounts of precious metals; and

   c. Maintain at the facility, for at least three years, records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.

8. Starting June 23, 1997, owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the secondary lead smelting national emission standards for hazardous air pollutants are conditionally exempt from regulation under sections 33.1-24-05-525 through 33.1-24-05-549, except for section 33.1-24-05-526. To be exempt, an owner or operator ~~must~~shall provide a one-time notice to the department identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this subsection. The notice also must state that the waste burned has a total concentration of nonmetal compounds listed in appendix V of chapter 33.1-24-02 of less than five hundred parts per million by weight as fired and as provided in paragraph 1 of subdivision b of subsection 4, or is listed in appendix XXVI of chapter 33.1-24-05.

History: Effective January 1, 2019; amended effective July 1, 2021; October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-16~~; S.L. 2017, ch. 199, § 19~~

33.1-24-05-535. Waiver of destruction and removal efficiency trial burn for boilers.

Boilers that operate under the special requirements of this section, and that do not burn hazardous waste containing (or derived from) hazardous waste number F020, F021, F022, F023, F026, or F027, are considered to be in conformance with the destruction and removal efficiency standard of subsection 1 of section 33.1-24-05-529, and a trial burn to demonstrate destruction and removal efficiency is waived. ~~When~~If burning hazardous waste:

1. A minimum of fifty percent of fuel fired to the device ~~shall~~must be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the department on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed "primary fuel" for purposes of this section. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The fifty percent primary fuel firing rate ~~shall~~must be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;

2. Boiler load ~~shall~~may not be less than forty percent. Boiler load is the ratio at any time of the total heat input to the maximum design heat input;

3. Primary fuels and hazardous waste fuels ~~shall~~must have a minimum as-fired heating value of eight thousand British thermal units per pound, and each material fired in a burner where hazardous waste is fired must have a heating value of at least eight thousand British thermal units per pound, as-fired;

4. The device ~~shall~~must operate in conformance with the carbon monoxide standard provided by subdivision a of subsection 2 of section 33.1-24-05-529. Boilers subject to the waiver of the destruction and removal efficiency trial burn provided by this section are not eligible for the alternative carbon monoxide standard provided by subsection 3 of section 33.1-24-05-529;

5. The boiler must be a watertube type boiler that does not feed fuel using a stoker or stoker type ~~machanism~~mechanism; and

6. The hazardous waste ~~shall~~must be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization system under the following conditions:

   a. ~~Viscosity.~~ The viscosity of the hazardous waste fuel as-fired shall not exceed three hundred SSU;

   b. ~~Particle size. When~~If a high pressure air or steam atomizer, low pressure atomizer, or mechanical atomizer is used, seventy percent of the hazardous waste fuel must pass through a ~~200~~two hundred mesh (74 micron) screen, and ~~when~~if a rotary cup atomizer is used, seventy percent of the hazardous waste must pass through a ~~100~~one hundred mesh (150 micron) screen;

   c. ~~Mechanical atomization systems.~~ Fuel pressure within a mechanical atomization system and fuel flow rate ~~shall~~must be maintained within the design range taking into account the viscosity and volatility of the fuel;

   d. ~~Rotary cup atomization systems.~~ Fuel flow rate through a rotary cup atomization system must be maintained within the design range taking into account the viscosity and volatility of the fuel.

History: Effective January 1, 2019; amended effective October 1, 2026.
General Authority: NDCC 23.1-04-03~~; S.L. 2017, ch. 199, § 1~~
Law Implemented: NDCC 23.1-04-03, 23.1-04-05~~; S.L. 2017, ch. 199, § 19~~

APPENDIX XIX

Reference Air Concentrations*		
Constituent	CAS No.	Reference Air ~~Concentraion~~Concentration (µg/m³)
Acetaldehyde	75-07-0	10
Acetonitrile	75-05-8	10
Acetophenone	98-86-2	100
Acrolein	107-02-8	20
Aldicarb	116-06-3	1
Aluminum Phosphide	20859-73-8	0.3
Allyl Alcohol	107-18-6	5
Antimony	7440-36-0	0.3
Barium	7440-39-3	50
Barium Cyanide	542-62-1	50
Bromomethane	74-83-9	0.8
Calcium Cyanide	592-01-8	30
Carbon Disulfide	75-15-0	200
Chloral	75-87-6	2
Chlorine (free)		0.4
2-Chloro-1,3-butadiene	126-99-8	3
Chromium III	16065-83-1	1000
Copper Cyanide	544-92-3	5
Cresols	1319-77-3	50
Cumene	98-82-8	1
Cyanide (free)	57-12-15	20
Cyanogen	460-19-5	30
Cyanogen Bromide	506-68-3	80
Di-n-butyl Phthalate	84-74-2	100
o-Dichlorobenzene	95-50-1	10
p-Dichlorobenzene	106-46-7	10
Dichlorodifluoromethane	75-71-8	200
2,4-Dichlorophenol	120-83-2	3
Diethyl Phthalate	84-66-2	800
Dimethoate	60-51-5	0.8
2,4-Dinitrophenol	51-28-5	2

Reference Air Concentrations*		
Constituent	**CAS No.**	**Reference Air ~~Concentraion~~Concentration (µg/m^3)**
Dinoseb	88-85-7	0.9
Diphenylamine	122-39-4	20
Endosulfan	115-29-1	0.05
Endrin	72-20-8	0.3
Fluorine	7782-41-4	50
Formic Acid	64-18-6	2000
Glycidyaldehyde	765-34-4	0.3
Hexachlorocyclopentadiene	77-47-4	5
Hexachlorophene	70-30-4	0.3
Hydrocyanic Acid	74-90-8	20
Hydrogen Chloride	7647-01-1	7
Hydrogen Sulfide	7783-06-4	3
Isobutyl Alcohol	78-83-1	300
Lead	7439-92-1	0.09
Maleic Anhydride	108-31-6	100
Mercury	7439-97-6	0.3
Methacrylonitrile	126-98-7	0.1
Methomyl	16752-77-5	20
Methoxychlor	72-43-5	50
Methyl Chlorocarbonate	79-22-1	1000
Methyl Ethyl Ketone	78-93-3	80
Methyl Parathion	298-00-0	0.3
Nickel Cyanide	557-19-7	20
Nitric Oxide	10102-43-9	100
Nitrobenzene	98-95-3	0.8
Pentachlorobenzene	608-93-5	0.8
Pentachlorophenol	87-86-5	30
Phenol	108-95-2	30
M-Phenylenediamine	108-45-2	5
Phenylmercuric Acetate	62-38-4	0.075
Phosphine	7803-51-2	0.3
Phthalic Anhydride	85-44-9	2000
Potassium Cyanide	151-50-8	50

Reference Air Concentrations*		
Constituent	CAS No.	Reference Air ~~Concentraion~~Concentration (µg/m³)
Potassium Silver Cyanide	506-61-6	200
Pyridine	110-86-1	1
Selenious Acid	7783-60-8	3
Selenourea	630-10-4	5
Silver	7440-22-4	3
Silver Cyanide	506-64-9	100
Sodium Cyanide	143-33-9	30
Strychnine	57-24-9	0.3
1,2,4,5-Tetrachlorobenzene	95-94-3	0.3
2,3,4,6-Tetrachlorophenol	58-90-2	30
Tetraethyl Lead	78-00-2	0.0001
Tetrahydrofuran	109-99-9	10
Thallic Oxide	1314-32-5	0.3
Thallium	7440-28-0	0.5
Thallium (I) Acetate	563-68-8	0.5
Thallium (I) Carbonate	6533-73-9	0.3
Thallium (I) Chloride	7791-12-0	0.3
Thallium (I) Nitrate	10102-45-1	0.5
Thallium Selenite	12039-52-0	0.5
Thallium (I) Sulfate	7446-18-6	0.075
Thiram	137-26-8	5
Toluene	108-88-3	300
1,2,4-Trichlorobenzene	120-82-1	20
Trichloromonofluoromethane	75-69-4	300
2,4,5-Trichlorophenol	95-95-4	100
Vanadium Pentoxide	1314-62-1	20
Warfarin	81-81-2	0.3
Xylenes	1330-20-7	80
Zinc Cyanide	557-21-1	50
Zinc Phosphide	1314-84-7	0.3

*The reference air concentration for other appendix V of chapter 33.1-24-02 constituents not listed herein or in appendix XX of chapter 33.1-24-05 is 0.1 µg/m³.

APPENDIX XXIX

Metal-Bearing Wastes Prohibited From Dilution in a Combustion Unit According to Subsection 3 of Section 33.1-24-05-252[1]

Waste Code	Waste Description
D004	Toxicity characteristic for arsenic.
D005	Toxicity characteristic for barium.
D006	Toxicity characteristic for cadmium.
D007	Toxicity characteristic for ~~vhromium~~chromium.
D008	Toxicity characteristic for lead.
D009	Toxicity characteristic for mercury.
D010	Toxicity characteristic for selenium.
D011	Toxicity characteristic for silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.

Waste Code	Waste Description
K069	Emission control dust/sludge from secondary lead smelting.
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid H_3AsO_4.
P011	Arsenic oxide As_2O_5.
P012	Arsenic trioxide.
P013	Barium cyanide.
P015	Beryllium.
P029	Copper cyanide Cu(CN).
P074	Nickel cyanide $Ni(CN)_2$.
P087	Osmium tetroxide.
P099	Potassium silver cyanide.
P104	Silver cyanide.
P113	Thallic oxide.
P114	Thallium (I) selenite.
P115	Thallium (I) sulfate.
P119	Ammonium vanadate.
P120	Vanadium oxide V_2O_5.
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.
U205	Selenium disulfide.
U216	Thallium (I) chloride.
U217	Thallium (I) nitrate.

[1]A combustion unit is defined as any thermal technology subject to sections 33.1-24-05-144 through 33.1-24-05-159 or sections 33.1-24-05-525 through 33.1-24-05-549.

CHAPTER 33.1-24-06

33.1-24-06-01. Application for a permit.

1. ~~**Permit application.**~~ Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the department as described in this section and section 33.1-24-06-17. Persons currently authorized with interim status shall apply for permits ~~when~~if required by the department. Persons covered by permits by rule (section 33.1-24-06-18) need not apply. Procedures for applications, issuance, and administration of emergency permits are found exclusively in section 33.1-24-06-19. Procedures for application, issuance, and administration of research, development, and demonstration permits are found exclusively in section 33.1-24-06-20. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivision a or subdivision b may be eligible for a standardized permit under sections 33.1-24-06-45 through 33.1-24-06-85. Procedures for application and issuance of standardized permits are found in sections 33.1-24-07-40 through 33.1-24-07-54, and sections 33.1-24-06-45 through 33.1-24-06-85.

   a. The facility generates hazardous waste and then nonthermally treats, or stores hazardous waste onsite in tanks, containers, or containment buildings; or

   b. The facility receives hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then stores, or nonthermally treats the hazardous waste in containers, tanks, or containment buildings.

2. ~~**Who must have a permit?**~~ North Dakota Century Code chapter 23.1-04 requires that a permit be obtained for the treatment, storage, or disposal of any hazardous waste as identified or listed in chapter 33.1-24-02. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivisions a and b of subsection 1 of section 33.1-24-06-48, may be eligible for a standardized permit under sections 33.1-24-06-45 through 33.1-24-06-85. Owners and operators of hazardous waste management units ~~must~~shall have permits during the active life (including the closure period) of the unit, during any compliance period specified under section 33.1-24-05-53, including any extension of that period under subsection 3 of section 33.1-24-05-53. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure according to section 33.1-24-05-64 after January 26, 1983, ~~must~~shall have postclosure permits, unless they demonstrate closure by removal as provided under subdivisions d and e. If a postclosure permit is required, the permit must address applicable chapter 33.1-24-05 ground water monitoring, unsaturated zone monitoring, corrective action, and postclosure care. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a postclosure permit under this section.

   a. ~~Specific inclusions.~~ Hazardous waste permits are required for:

      (1) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste (see section 33.1-24-06-20). However, the owner or operator with an underground injection control permit ~~will be~~is deemed to have a hazardous waste permit for the injection well itself if the owner or operator complies with requirements of subsection 1 of section 33.1-24-06-18.

      (2) Treatment, storage, or disposal of hazardous waste at facilities requiring a North Dakota pollutant discharge elimination system permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste ~~will be~~is

deemed to have a hazardous waste permit for that waste if the owner or operator complies with the requirements of subsection 2 of section 33.1-24-06-18.

b. ~~Specific exclusions.~~ Hazardous waste permits are not required for:

(1) Generators who accumulate hazardous waste onsite ~~for less than time periods as provided in section 33.1-24-03-12~~in compliance with all of the conditions for exemption provided in sections 33.1-24-03-26, 33.1-24-03-28, and 33.1-24-03-29.

(2) Farmers who dispose of pesticide containers from their own use as provided in section 33.1-24-03-40.

(3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulation by section 33.1-24-02-04 or 33.1-24-03-26.

(4) Owners or operators of totally enclosed treatment facilities as defined in section 33.1-24-01-04.

(5) Owners or operators of elementary neutralization units or wastewater treatment units as defined in section 33.1-24-01-04.

(6) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of section 33.1-24-03-08 at a transfer facility for a period of ten days or less.

(7) Persons mixing absorbent material and waste in a container, provided this mixing occurs at the time waste is first placed in the container, and the person complies with sections 33.1-24-05-90 and 33.1-24-05-91, and subsection 2 of section 33.1-24-05-08.

(8) Universal waste handlers and universal waste transporters as defined in section 33.1-24-01-04 managing the wastes listed below. These handlers are subject to regulation under sections 33.1-24-05-700 through 33.1-24-05-799.

(a) Batteries as described in section 33.1-24-05-702;

(b) Pesticides as described in section 33.1-24-05-703;

(c) Mercury containing equipment as described in section 33.1-24-05-704;~~ and~~

(d) Lamps as described in section 33.1-24-05-705; and

(e) Aerosol cans as described in section 33.1-24-05-706.

(9) ~~Immediate response activities.~~

(a) A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

[1] A discharge of a hazardous waste.

[2] An imminent and substantial threat of a discharge of hazardous waste.

[3] A discharge of a material which, ~~when~~if discharged, becomes a hazardous waste.

[4] An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in section 33.1-24-01-04.

(b) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(c) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit ~~must~~shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed and its disposition.

(10) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in subsection 11 of section 33.1-24-05-310. Reverse distributors are subject to regulation under sections 33.1-24-05-310 through 33.1-24-05-320 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

c. ~~Permits for less than an entire facility.~~ The department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

d. ~~Closure by removal.~~ Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under chapter 33.1-24-05 standards ~~must~~shall obtain a postclosure permit unless they can demonstrate to the department that the closure met the standards for closure by removal or decontamination in section 33.1-24-05-122, subsection 5 of section 33.1-24-05-167, or section 33.1-24-05-135 respectively. The demonstration may be made in the following ways:

(1) If the owner or operator has submitted a part B application for a postclosure permit, the owner or operator may request a determination, based on information contained in the application, that chapter 33.1-24-05 closure by removal standards were met. If the department believes that chapter 33.1-24-05 standards were met, the department ~~will~~shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in subdivision e.

(2) If the owner or operator has not submitted a part B application for a postclosure permit, the owner or operator may petition the department for a determination that a postclosure permit is not required because the closure met the applicable chapter 33.1-24-05 closure standards.

(a) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under requirements that met or exceeded the chapter 33.1-24-05 closure by removal standard.

(b) The department shall approve or deny the petition according to the procedures outlined in subdivision e.

e. ~~Procedures for closure equivalency determination.~~

(1) If a facility owner or operator seeks an equivalency demonstration under subdivision d, the department ~~will~~shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within thirty days from the notice. ~~The department will also, in~~In response to a request~~,~~ or at the department's own discretion, the department also shall hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the closure period. The department ~~will~~shall give public notice of the hearing at least thirty days before it occurs~~ (public~~. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.~~)~~

(2) The department ~~will~~shall determine whether the chapter 33.1-24-05 closure met the standards for closure by removal or decontamination in section 33.1-24-05-122, subsection 5 of section 33.1-24-05-167, or section 33.1-24-05-135 respectively within ninety days of its receipt. If the department finds that the closure did not meet the applicable chapter 33.1-24-05 standards, the department ~~will~~shall provide the owner or operator with a written statement of the reasons why the closure failed to meet chapter 33.1-24-05 standards. The owner or operator may submit additional information in support of an equivalency demonstration within thirty days after receiving such written statement. The department ~~will~~shall review any additional information submitted and make a final determination within sixty days.

(3) If the department determines that the facility did not close in accordance with chapter 33.1-24-05 closure by removal standards, the facility is subject to postclosure permitting requirements.

3. ~~**Who applies?**~~ ~~When~~If a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit~~, however~~. However, the owner ~~must~~ also shall sign the permit application.

4. ~~**Completeness.**~~ The department ~~will~~may not issue a permit before receiving a complete application for a permit, except for permits by rule, or emergency permits. An application for a permit is complete ~~when~~if the department receives an application form and any supplemental information which is completed to the department's satisfaction. The completeness of any application for a permit ~~shall~~must be judged independently of the status of any other permit application or permit for the same facility or activity. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection 10. The department may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

5. ~~**Information requirements.**~~ All applicants for hazardous waste permits shall provide the information required by section 33.1-24-06-17 to the department.

6. ~~**Recordkeeping.**~~ Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this chapter for a period of at least three years from the date the application is signed.

7. ~~**When to apply for a permit.**~~

a. Existing hazardous waste management facilities~~.~~ shall apply for a permit as follows:

(1) Owners and operators of existing hazardous waste management facilities shall submit part A of their permit application (see subsection 1 of section 33.1-24-06-17) to the department no later than whichever occurs first:

(a) Six months after the date of publication of rules which first require them to comply with the standards set forth in chapter 33.1-24-05; or

(b) Thirty days after the date they first become subject to the standards set forth in chapter 33.1-24-05~~;~~.

~~whichever occurs first.~~

(2) The department may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit part A of their permit application if it finds that:

(a) There has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and

(b) Such confusion is attributable to ambiguities in the department's rules in chapters 33.1-24-01 through 33.1-24-05.

(3) The department may~~, by compliance order,~~ extend the date by which the owner or operator of an existing hazardous waste management facility must submit part A of the permit application by compliance order.

(4) The owner and operator of an existing hazardous waste management facility may be required to submit part B of the permit application at any time. Any owner or operator must be allowed at least six months from the date of request to submit the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit an application at any time.

(5) Failure to furnish a requested permit application on time or to furnish in full the information required by the application is grounds for termination of the facility's operating status under the procedures of chapter 33.1-24-07.

b. New hazardous waste management facilities~~.~~ shall apply for a permit as follows:

(1) ~~No~~A person may not begin physical construction of a new hazardous waste management facility without having submitted a complete permit application (including both part A and part B) and having received a finally effective hazardous waste permit.

(2) An application for a permit for a new hazardous waste management facility (including both part A and part B) may be filed anytime after promulgation of those standards in sections 33.1-24-05-89, et seq., applicable to such facility. The application must be submitted to the department at least one hundred eighty days before physical construction is expected to commence.

8. ~~**Updating permit applications.**~~

a. If any owner or operator of a hazardous waste management facility has filed part A of a permit application and has not yet filed part B, the owner or operator shall amend part A of the application with the department:

(1) No later than the effective date of regulatory provisions listing or designating wastes as hazardous, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(2) As necessary to comply with the provisions of section 33.1-24-06-16 for changes prior to the department making final administrative disposition of the application.

b. The owner or operator of a facility who fails to comply with the updating requirements of subdivision a is not authorized to treat, store, or dispose of those wastes not covered by a duly filed part A of the application.

9. ~~**Reapplications.**~~ Any hazardous waste management facility with an effective permit shall submit a new application at least one hundred eighty days before the expiration date of the effective permit unless permission for a later date has been granted by the department~~(the~~. The department shall not grant permission for applications to be submitted later than the expiration date of the existing permit~~)~~. Any hazardous waste management facility with an effective permit and intending to be covered by a standardized permit, shall submit a notice of intent as described in subdivision a of subsection 4 of section 33.1-24-06-02, at least one hundred eighty days before the expiration date of the effective permit unless permission for a later date has been granted by the department. The department shall not grant permission for applications or notices of intent to be submitted later than the expiration date of the existing permit, except as allowed by subdivision b of subsection 4 of section 33.1-24-06-02.

10. ~~**Exposure information.**~~

a. Any permit part B applications submitted by an owner or an operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(1) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(2) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph 1; and

(3) The potential magnitude and nature of the human exposure resulting from such releases.

b. Owners and operators of a landfill or surface impoundment who have already submitted a part B application ~~must~~shall submit the exposure information required in subdivision a.

11. ~~**General requirements.**~~ The department may require a permittee or an applicant to submit information~~ in order~~ to establish permit conditions under subdivision b of subsection 2 of section 33.1-24-06-05 and subsection 1 of section 33.1-24-06-06.

12. If the department concludes, based on one or more of the factors listed in subdivision a that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the department shall require the additional information or assessments necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health or the environment, or both, resulting from both direct and indirect exposure pathways. The department may also require a permittee or applicant to provide information necessary to determine whether such assessments should be required.

a. The department shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(1) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(2) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(3) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(4) Identities and quantities of other offsite sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(5) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(6) Volume and types of wastes, for example wastes containing highly toxic constituents;

(7) Other onsite sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(8) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(9) Such other factors as may be appropriate.

b. [Reserved].

History: Effective January 1, 2019; amended effective July 1, 2021; October 1, 2026.
General Authority: NDCC 23.1-04-03
Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-08~~; S.L. 2017, ch. 199, § 19~~

TITLE 67

PUBLIC INSTRUCTION, SUPERINTENDENT OF

OCTOBER 2026

ARTICLE 67-15
MODIFIED PUBLIC SCHOOL CALENDAR

Chapter

CHAPTER 67-15-02
~~RECONFIGURATION OF INSTRUCTIONAL DAYS~~FOUR-DAY SCHOOL WEEK

Section

67-15-02-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Academic opportunities" means course offerings, career readiness activities, work-based learning opportunities, internships, job shadows, and cocurricular activities meant to enhance student learning.

2. "Applicant" means a school seeking approval for reconfiguration of instructional days.

~~2. "Curricular instruction", as used in subsection 2 of North Dakota Century Code section 15.1-06-04, means the actual class period, including study hall, but does not include time to pass between classes, lunch periods, or other time that is not devoted directly to student instruction.~~

3. "Department" means the department of public instruction.

4. "Educational outcomes" means any of the following:

a. Successful completion of a four-day school week performance management contract that includes indicators related to proficiency and growth, as defined by the department;

b. Successful completion of the requirements of a memorandum of understanding for chronically low-performing schools or school districts, as defined by North Dakota Century Code section 15.1-02-23;

c. The school district's performance on the state's accountability performance system; or

d. Quantifiable metrics in a school district's strategic plan.

5. "Four-day school week" means a school calendar where fifty percent or more of the calendar weeks consist of fewer than five days of instruction.

6. "School" means a public school located in North Dakota and subject to the regulatory authority of the state of North Dakota.

7. "Superintendent" means the superintendent of public instruction.

History: Effective June 1, 2002; amended effective October 1, 2006; October 1,2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-04, 15.1-06-08.1

67-15-02-02. Eligibility for ~~reconfigured~~four-day school week calendar.

Upon approval by the superintendent, ~~any~~a school district may ~~reconfigure the number of school days required by North Dakota Century Code section 15.1-06-04~~operate under a four-day school week calendar if the ~~reconfiguration~~school district complies with this chapter and North Dakota Century Code sections 15.1-06-03, 15.1-06-04, 15.1-21-03, and 15.1-21-04~~, and 15.1-06-03~~.

History: Effective June 1, 2002; amended effective October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-04, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-03. Application.

~~Application~~The online application for a ~~reconfigured calendar must be made on SFN 58170 which~~waiver to operate under a school calendar that consists of a four-day school week is available on the department of public instruction's ~~web site~~website. The application must include the school name, signatures of the administrator and board chairman, and the information that is responsive to the considerations to be made by the superintendent, including how the proposed ~~reconfigured~~four-day school week calendar relates to the criteria listed in section 67-15-02-05. At a minimum, each applicant shall include the following in the application:

1. The goals and objectives of the ~~reconfiguration program~~four-day school week calendar;

2. Documentation of community input into the proposed ~~program~~four-day school week calendar, including written correspondence on the subject, summaries of oral ~~contacts~~comments, and a summary of any discussions at public meetings or hearings;

3. ~~A cost-benefit study, including potential for savings in transportation and energy costs;~~

~~4.~~ The number of hours of instructional time for the most recent school year completed prior to the application;

~~5.~~4. A proposed school calendar that will ~~assure middle and high school~~ensure students will receive ~~one thousand fifty~~the minimum number of hours of instructional time ~~and elementary~~

~~students will receive nine hundred sixty-two and one-half hours of instructional time~~defined in North Dakota Century Code section 15.1-06-04;

~~6.~~5. A class schedule for each grade level;

~~7.~~6. A contingency plan for makeup days and allowances for storms and other school closings;

7. A proposed school calendar that will be used by the school district if the waiver application is denied;

8. A professional development plan; and

9. An evaluation plan, including specific plans to evaluate:

   a. ~~Student performance;~~

   ~~b. Student use of facilities;~~

   ~~c. Community use of facilities;~~

   ~~d. The success rate of any innovations~~Continuous improvement that includes the implementation of needs assessment, planning, analyzing data, and evaluation of educational outcomes;

   ~~e.~~b. The change in educational ~~opportunities~~outcomes for students; and

   ~~f.~~c. The change in academic opportunities for students~~; and~~

   ~~g. Any costs savings attributable to the reconfiguration, including savings in staffing, energy, transportation, and maintenance costs~~.

History: Effective June 1, 2002; amended effective October 1, 2006; April 1, 2020; October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-04, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-04. Application process.

1. A completed ~~SFN 58170~~online application must be submitted to~~:~~ the department.

   ~~Superintendent of Public Instruction~~
   ~~Department of Public Instruction~~
   ~~600 East Boulevard Avenue, Department 201~~
   ~~Bismarck, ND 58505-0440~~

2. To be considered by the superintendent, an application under this chapter must be received in the department on or before ~~March first~~January fifth of the school year prior to the school year for which a ~~reconfigured~~four-day school week calendar is sought.

3. The superintendent will review each application and approve, approve with modifications as provided under section 67-15-02-06, or deny the application.

4. Notice of the superintendent's decision ~~will~~must be ~~mailed~~sent by electronic mail to the school district's reported administrator and business manager or by first-class mail to the applicant on or before ~~April~~February fifteenth of the school year prior to the school year for which a ~~reconfigured~~four-day school week calendar is sought.

5. A school district that is approved to operate under a four-day school week calendar may voluntarily return to a five-day school week calendar the following school year by notifying the superintendent in writing of its intention to do so.

History: Effective June 1, 2002; amended effective October 1, 2006; October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-04.1. Performance management contract.

After approval of an application by the superintendent, each school district shall execute a performance management contract between the department and the school district. The performance management contract must include specific indicators of proficiency and growth sought to be achieved through the implementation of a four-day school week calendar including performance benchmarks related to:

1. Improved means of instruction;
2. Anticipated educational outcomes;
3. Additional academic opportunities for students; or
4. Other performance-based information or objectives outlined in the school district's evaluation plan.

History: Effective October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)
Law Implemented: NDCC 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-05. Evaluation of applications.

Each application for a ~~reconfigured~~four-day school week calendar must be evaluated by the superintendent using the following criteria:

1. ~~The impact of the reconfiguration plan on the period of instructional time.~~ Under this criterion the superintendent ~~will~~shall consider~~:~~

   ~~a.~~ ~~Whether~~ whether the ~~elementary~~ students ~~will~~shall receive at least ~~nine hundred sixty-two and one-half~~the minimum number of hours each year as defined in North Dakota Century Code section 15.1-06-04 under the ~~plan; and~~

   ~~b.~~ ~~Whether the middle and high school students will receive at least one thousand fifty hours of instructional time~~proposal.

2. The superintendent ~~must also~~shall find ~~one~~two or more of the following to be a likely result of the ~~reconfiguration~~four-day school week calendar proposal:

   a. ~~That the proposed plan encourages innovation~~The proposal is built around a continuous improvement process that includes the implementation of needs assessment, planning, analyzing data, and evaluation of educational outcomes. Under this criterion the superintendent ~~will~~shall consider:

      (1) Educational trends relevant to the proposed ~~reconfiguration~~four-day school week calendar;

      (2) Research relevant to the proposed ~~reconfiguration~~four-day school week calendar; and

      (3) The likelihood that instructional staff ~~will~~shall develop and use innovative or improved means of instruction, resulting in improved educational outcomes.

b. ~~That the proposed plan will~~The proposal must improve educational ~~opportunities~~outcomes for students. Under this criterion the superintendent ~~will~~shall consider:

(1) ~~Educational opportunities available to students under the existing configuration~~Current educational outcomes; and

(2) ~~Educational opportunities available to students~~Expected educational outcomes if the ~~reconfiguration plan~~four-day school week calendar proposal is adopted.

c. ~~That the proposed plan will~~The proposal must enhance the academic opportunities of the students attending ~~the school~~schools within the applicant's district. Under this criterion the superintendent ~~will~~shall consider:

(1) Academic opportunities available to students under the existing configuration; and

(2) Academic opportunities available to students if the ~~reconfiguration plan~~four-day school week calendar proposal is adopted.

~~d. That the proposed plan will allow current students greater flexibility in the use of the school facilities. Under this criterion the superintendent will consider:~~

~~(1) Existing facility use by current students;~~

~~(2) The flexibility in use of school facilities available to current students under the existing configuration; and~~

~~(3) The flexibility in use of school facilities available to current students if the reconfiguration plan is adopted.~~

~~e. That individuals or groups other than current students will have greater flexibility in the use of the school facilities. Under this criterion the superintendent will consider:~~

~~(1) Existing facility use by individuals and groups other than current students;~~

~~(2) The flexibility in use of school facilities available to individuals or groups other than current students under the existing configuration; and~~

~~(3) The flexibility in use of school facilities available to individuals or groups other than current students if the reconfiguration plan is adopted.~~

~~f. That the reconfiguration plan will result in significant cost-savings to the district applying. Under this criterion the superintendent will consider:~~

~~(1) Present costs of the district;~~

~~(2) Proposed reductions in the district's costs; and~~

~~(3) The difference between the present costs to the district and the proposed costs under the reconfigured plan will be considered significant if the present costs are anticipated to exceed the proposed costs by forty dollars per student.~~

History: Effective June 1, 2002; amended effective October 1, 2006; April 1, 2020; October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-04, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-06. Modifications to applications.

~~At any time prior to March first~~Before January fifth of the year prior to the school year the ~~proposed reconfiguration plan~~four-day school week calendar is to take effect, an applicant may submit additional information to the superintendent for consideration as part of the application.

History: Effective June 1, 2002; amended effective October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-04, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-07. Term of ~~reconfiguration plan~~proposed four-day school week calendar - Application for extension.

~~If approved, a school's reconfiguration plan is valid for one year. A school may request the superintendent to extend the reconfiguration plan for an additional year. If granted, the first extension after the initial year is valid for one school year. All extensions thereafter are valid for five school years. A request for extension will be granted only if:~~

~~1. The application for extension is received by the superintendent prior to July first of the year after the year in which the reconfiguration was implemented;~~

~~2. The school followed the reconfiguration plan as approved by the superintendent; and~~

~~3. The school can demonstrate:~~

~~a. The requisite number of instructional hours for elementary and high school students has been delivered; and~~

~~b. Under the reconfiguration plan either:~~

~~(1) Innovation occurred in the school;~~

~~(2) Enhanced educational or academic opportunities were provided to the students;~~

~~(3) There was greater flexibility in the use of the school by students, nonstudents, or organizations; or~~

~~(4) The school had substantial financial savings as a result of the reconfiguration.~~

~~A request for extension of a reconfiguration plan may also be granted if a school demonstrates that the program has not resulted in a negative outcome in any of the four evaluation criteria set out in subdivision b of subsection 3 and more time is needed to assure a sufficient evaluation period.~~

1. If approved, a school's initial proposed four-day school week calendar is valid for three years. Any school district that was approved for an initial one-year waiver or a one-year waiver extension for the 2026-27 school year before July 1, 2026, automatically shall have its waiver extended to expire three school years after initially approved for a four-day school week waiver.

2. A school district operating under a four-day school week calendar may apply to extend the four-day school week calendar proposal beyond the current term for an additional five school years. An application for a five-year extension must be granted if:

   a. The application for extension is received by the superintendent before January fifth of the final school year of the current term of the four-day school week calendar proposal;

   b. The school district followed the four-day school week calendar proposal as approved by the superintendent;

c. The requisite number of instructional hours for elementary, middle school, and high school students has been delivered; and

d. The school district demonstrates meeting the requirements of at least one of the following:

(1) Enhanced educational outcomes were achieved during the current term;

(2) Additional academic opportunities were provided to students without a decline in educational outcomes during the current term; or

(3) The applicant is considered to be in the top twenty percent of the state's schools, as measured by the state's performance accountability system.

3. If the school district does not meet the extension requirements of subdivision d of subsection 2, the school district must be notified that sufficient progress was not made. The superintendent must notify the school district by October thirty-first of the final school year of the current term the specific interim expectations that must be met. The school district must demonstrate satisfaction of the requirements of subdivision d of subsection 2 by January thirty-first. If the school district is unable to demonstrate satisfaction of the requirements of subdivision d of subsection 2 by January thirty-first, the school must return to a five-day school week the following school year.

4. If the superintendent determines an additional school year's worth of student outcome data is needed to determine whether the school district has met the extension requirements in subdivision d of subsection 2, an extension of one-year may be granted to allow an additional year of student outcome data to become available.

History: Effective June 1, 2002; amended effective October 1, 2006; October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 1.15-06-04, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-08. Reconsideration.

If the applicant's ~~request for reconfiguration of the school calendar program~~application or application for extension to operate under a four-day school week calendar is denied, the ~~denial must be~~superintendent shall provide notice of the denial of the application in writing. The written notice of denial must state the reason for the denial. The notice of denial must be physically or electronically mailed to the applicant at the address provided for in the application~~ and~~. The notice of denial must ~~include a notice~~notify the applicant of the opportunity to request~~ a~~ reconsideration of the denial of the application. A request for reconsideration must be in writing and must be received by the superintendent within three weeks of the date of physical or electronic mailing by the department. Late requests for reconsideration ~~will~~may not be considered. The request for reconsideration~~ request~~ must state the following:

1. The facts, ~~law~~laws, or ~~rule~~rules the applicant believes ~~was~~were erroneously interpreted or applied; and

2. The applicant's arguments on how the facts, ~~law~~laws, or ~~rule~~rules should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the applicant's request for reconsideration~~ request~~ within three weeks after receiving a complete reconsideration request.

History: Effective June 1, 2002; amended effective October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-08.1, 15.1-21-03, 15.1-21-04

67-15-02-09. Monitoring.

1. The ~~superintendent will~~department shall monitor the ~~reconfiguration programs~~four-day school week calendar of applicants whose ~~programs~~proposals are approved. The ~~program of monitoring at a minimum will~~department's monitoring of school districts' four-day school week calendar must include ~~periodic~~submission of annual reports from the applicant setting forth:

   ~~1.~~ a. The number of hours of instructional time provided to high school and elementary students respectively;

   ~~2.~~ b. The enhanced educational ~~and academic opportunities~~outcomes for students; and

   ~~3. Any innovations resulting from the reconfiguration of the school calendar;~~

   ~~4. The use of school facilities by students;~~

   ~~5. The use of school facilities by nonstudents and organizations;~~

   ~~6. Any cost-savings attributable to the reconfiguration; and~~

   ~~7. Any modifications to the approved reconfiguration program.~~

   c. The enhanced academic opportunities for students.

2. During the monitoring process, the superintendent may revoke a school district's waiver to operate under a four-day school week calendar before the conclusion of the current term if the superintendent concludes:

   a. A school district has failed to comply with the terms of a performance management contract executed under this chapter;

   b. A school district has failed to comply with the terms of a memorandum of understanding for chronically low-performing schools or school districts executed under the terms of North Dakota Century Code section 15.1-02-23;

   c. Academic opportunities for students within the school district have decreased;

   d. The school district's performance on the state's accountability system has decreased; or

   e. The school district has failed to otherwise comply with the requirements of this chapter.

3. The effective date for revoking a four-day school week calendar waiver must align with the end of the school year. If the superintendent revokes a school district's waiver to operate under a four-day school week calendar, the school district must be notified no later than February fifteenth that it must return to a five-day school week during the following school year.

4. The superintendent shall notify the school district in writing of the intention to revoke the waiver to operate under a four-day school week calendar. The written notice of revocation must provide the reason for the revocation. The notice of revocation must be physically or electronically mailed to the superintendent and the school board president of the school district at the address provided within the application. The notice of revocation must notify the school district of the opportunity to request reconsideration of the revocation of the waiver.

5. A request for reconsideration must be in writing and must be received by the superintendent within three weeks of the date of physical or electronic mailing by the department. Late requests for reconsideration may not be considered. The request for reconsideration of the revocation of the waiver must state the following:

a. The facts, laws, or rules the school district believes were erroneously interpreted or applied; and

b. The school district's arguments on how the facts, laws, or rules should have been applied, giving specific reasons and thorough analysis.

6. The superintendent shall issue a final written response on the school district's request for reconsideration of the revocation of the waiver within three weeks after receiving a complete reconsideration request.

History: Effective June 1, 2002; amended effective October 1, 2026.
General Authority: NDCC 15.1-06-08.1(2), 15.1-06-08.1(5)~~, 28-32-02~~
Law Implemented: NDCC 15.1-06-08.1, 15.1-21-03, 15.1-21-04