

**ARTICLE 33-15
AIR POLLUTION CONTROL**

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**CHAPTER 33-15-01
GENERAL PROVISIONS**

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33-15-01-01. Purpose. It is the purpose of these air quality standards and emission regulations to state such requirements as shall be required to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience for the people, and to facilitate the enjoyment of the natural attractions of this state.

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

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

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

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

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

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or when the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. “Act” means North Dakota Century Code chapter 23-25.
2. “Air contaminant” means any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.
3. “Air pollution” means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. “Ambient air” means the surrounding outside air.
5. “ASME” means the American society of mechanical engineers.
6. “Coal conversion facility” means any of the following:
 - a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.
 - b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.
 - c. A coal beneficiation plant, and all additions thereto, which improves the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.
7. “Control equipment” means any device or contrivance which prevents or reduces emissions.
8. “Department” means the North Dakota state department of health.
9. “Emission” means a release of air contaminants into the ambient air.

10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable emission limit or emission standard specified in this article or a permit issued pursuant to this article.
11. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.
12. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to 40, Code of Federal Regulations, parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40, Code of Federal Regulations, 52.21 or under regulations approved pursuant to 40, Code of Federal Regulations, part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.
13. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.
14. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.
15. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.
16. "Hazardous waste" has the same meaning as given by chapter 33-24-02.
17. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

18. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.
19. "Industrial waste" means solid waste which is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
20. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
21. "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.
22. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.
23. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
24. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.
25. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
26. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.
27. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

28. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.
29. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.
30. "Pesticide" includes:
- a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;
 - b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
 - c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscicides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.
31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.
32. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five tenths micrometers.
33. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
34. "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.
35. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].
36. "Premises" means any property, piece of land or real estate, or building.

37. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
38. "Process weight rate" means the rate established as follows:
- a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
 - b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.
39. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
40. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste and infectious waste.
41. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1144 degrees Kelvin to 1255 degrees Kelvin]).
42. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.
43. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.
44. "Source" means any property, real or personal, or person contributing to air pollution.
45. "Source operation" means the last operation preceding emission which operation:

- a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and
 - b. Is not an air pollution abatement operation.
46. “Special waste” means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
47. “Stack or chimney” means any flue, conduit, or duct arranged to conduct emissions.
48. “Standard conditions” means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].
49. “Submerged fill pipe” means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.
50. “Trade waste” means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including, but not limited to, wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.
51. “Trash” means refuse commonly generated by food warehouses, wholesalers and retailers which is comprised only of non-recyclable paper, paper products, cartons, cardboard, wood, wood scraps and floor sweepings and other similar materials. Trash shall not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash shall be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste and similar substances.
52. “Volatile organic compounds” means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on ~~January 1, 2012~~ July 1, 2013, which is incorporated by reference.

53. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-05. Abbreviations. The abbreviations used in this article have the following meanings:

A	-	ampere
A.S.T.M.	-	American Society for Testing and Materials
Btu	-	British thermal unit
°C	-	degree Celsius (centigrade)
cal	-	calorie
CdS	-	cadmium sulfide
cfm	-	cubic feet per minute
CFR	-	Code of federal regulations
cu ft	-	cubic feet
CO	-	carbon monoxide
CO ₂	-	carbon dioxide
dcf	-	dry cubic feet
dcm	-	dry cubic meter
dscf	-	dry cubic feet at standard conditions
dscm	-	dry cubic meter at standard conditions
eq	-	equivalents
°F	-	degree Fahrenheit
ft	-	feet
g	-	gram
gal	-	gallon
g eq	-	gram equivalents
gr	-	grain
hr	-	hour
HCl	-	hydrochloric acid
Hg	-	mercury
H ₂ O	-	water
H ₂ S	-	hydrogen sulfide
H ₂ SO ₄	-	sulfuric acid
Hz	-	hertz
in.	-	inch
j	-	joule
°K	-	degree Kelvin
k	-	1,000

kg	-	kilogram
l	-	liter
lpm	-	liter per minute
lb	-	pound
m	-	meter
m ³	-	cubic meter
meq	-	milliequivalent
min	-	minute
mg	-	milligram - 10 ⁻³ gram
Mg	-	megagram - 10 ⁶ gram
ml	-	milliliter - 10 ⁻³ liter
mm	-	millimeter - 10 ⁻³ meter
mol	-	mole
mol.wt.	-	molecular weight
mV	-	millivolt
N ₂	-	nitrogen
N	-	newton
ng	-	nanogram - 10 ⁻⁹ gram
nm	-	nanometer - 10 ⁻⁹ meter
NO	-	nitric oxide
NO ₂	-	nitrogen dioxide
NO _x	-	nitrogen oxides
O ₂	-	oxygen
Pa	-	pascal
PM	-	particulate matter
PM _{2.5}	-	particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers
PM ₁₀	-	particulate matter with an aerodynamic diameter less than or equal to 10 micrometers
ppb	-	parts per billion
ppm	-	parts per million
psia	-	pounds per square inch absolute
psig	-	pounds per square inch gauge
°R	-	degree Rankine
s-sec	-	second
scf	-	cubic feet at standard conditions
scfh	-	cubic feet per hour at standard conditions
scm	-	cubic meters at standard conditions
scmh	-	cubic meters per hour at standard conditions
SO ₂	-	sulfur dioxide
SO ₃	-	sulfur trioxide
SO _x	-	sulfur oxides
sq ft	-	square feet
std	-	at standard conditions
TSP	-	total suspended particulate

μg	-	microgram - 10 ⁻⁶ gram
V	-	volt
W	-	watt
Ω	-	ohm

History: Amended effective January 1, 1989; January 1, 2007; April 1, 2009; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-05

33-15-01-07. Variances.

1. Where upon written application of the responsible person or persons the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship, would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe for prevention, control, or abatement of air pollution in harmony with the intent of the state and any applicable federal laws.
2. No variance may permit or authorize the creation or continuation of a public nuisance, or a danger to public health or safety.

History: Amended effective June 1, 1990.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

History: Amended effective June 1, 1990.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-09. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article and the various applications thereof are declared to be severable.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. Planning agency land use plans.

- a. The department will provide to planning agencies, for use in preparing land use plans, information concerning:
 - (1) Air quality.
 - (2) Air pollutant emissions.
 - (3) Air pollutant meteorology.
 - (4) Air quality goals.
 - (5) Air pollution effects.
- b. The department will review all land use plans and prepare recommendations for consideration in the plan adoption process.

2. Zoning agency regulations.

- a. The department will provide to zoning control agencies, for use in preparing regulations, information concerning:
 - (1) Air quality.
 - (2) Air pollutant emissions.
 - (3) Air pollution meteorology.
 - (4) Air quality goals.
 - (5) Air pollution effects.
- b. The department will review all zoning regulations and prepare recommendations for consideration in the regulation adoption process.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-11. (RESERVED)

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

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

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

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

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

History: Amended effective June 1, 2001.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

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

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

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

- a. Identification of the specific facility to be taken out of service as well as its location and permit number.
- b. The expected length of time that the air pollution control equipment will be out of service.
- c. The nature and estimated quantity of emissions of air pollutants likely to be emitted during the shutdown period.
- d. Measures, such as the use of off-shift labor and equipment, that will be taken to minimize the length of the shutdown period and emissions during the shutdown.
- e. The reasons that it would be impossible or impractical to shutdown the source operation during the maintenance period.
- f. Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article.

2. Malfunctions.

- a. When a malfunction in any installation occurs that can be expected to last longer than twenty-four hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations, the person responsible for such installation shall notify the department of such malfunction as soon as possible during normal working hours. The notification must contain a statement giving all pertinent facts, including the estimated duration of the breakdown. The department shall be notified when the condition causing the malfunction has been corrected.
- b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at 701-328-5188. After hours the department can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is 701-328-9921.

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

- (1) The excess emissions were caused by a sudden, unavoidable breakdown of technology that was beyond the reasonable control of the owner or operator.
- (2) The excess emissions could not have been avoided by better operation and maintenance, did not stem from an activity or event that could have been foreseen and avoided, or planned for.
- (3) To the extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions.
- (4) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and possible.
- (5) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality.
- (6) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning equipment.

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

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

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

monitoring system must be made. The provisions of this subsection do not apply to sources that are subject to monitoring requirements in chapter 33-15-21.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1992; September 1, 1997; January 1, 2007; April 1, 2009; January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

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

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

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

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

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

1. No person shall permit or cause air pollution, as defined in section 33-15-01-04.
2. Nothing in any other part of this article concerning emission of air contaminants or any other regulation relating to air pollution shall in any manner be construed as authorizing or legalizing the creation or maintenance of air pollution.

History: Amended effective June 1, 1990; September 1, 1997; June 1, 2001.

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

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

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

1. **Public inspection.** Any record, report, or information obtained or submitted pursuant to this article will be available to the public for inspection and copying during normal working hours unless the department certifies that the information is confidential. Anyone requesting department assistance in collecting, copying,

certifying, or mailing public information must tender, in advance, the reasonable cost of those services.

2. **Information submitted as trade secrets.** The department may certify records, reports, or information, or particular part thereof, other than emission data, as confidential upon a showing that the information would, if made public, divulge methods or processes entitled to protection as trade secrets. Any person submitting trade secret information must present the information to the department in a sealed envelope marked "CONFIDENTIAL". Each page of any document claimed confidential must be clearly marked with the word "CONFIDENTIAL". The submission must contain two parts:
 - a. The material claimed to contain trade secret information; and
 - b. A request for confidential treatment including:
 - (1) All information for which no claim is being made;
 - (2) An affidavit stating how and why the information fulfills the conditions of confidentiality under this subsection; and
 - (3) An index to and summary of the information submitted which is suitable for release to the public.
3. **Accepted trade secret claims.** All information which meets the test of subsection 2 must be marked by the department as "ACCEPTED" and protected as confidential information.
4. **Rejected trade secret claims.** If the department determines that information submitted pursuant to subsection 2 does not meet the criteria of that subsection for confidential treatment, the department shall promptly notify the person submitting the information of that determination. The department shall in that event give that person at least twenty days in which to:
 - a. Accept the determination of the department;
 - b. Request that the information be returned to the person;
 - c. Further justify the contention that the information deserves protection as a trade secret; or
 - d. Further limit the scope of information for which a claim of confidentiality is made.

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

5. **Appeal of nondisclosure claims.** Any person who identifies and tenders the reasonable cost of collecting, copying, certifying, and mailing particular information held by the department under subsection 2 may file with the department a petition for reconsideration stating how and why the public's interest would be better served by the release of the requested information than by its retention as confidential by the department. The department shall then reconsider the confidential status of the information. The department action on a petition for reconsideration constitutes final agency action for purposes of judicial review. Appeal of the department's action must be to an appropriate district court.
6. **Retention of confidential information.** All information which is accepted by the department as confidential must be stored in locked filing cabinets. Only those personnel of the department specifically designated by the department shall have access to the information contained therein. The department may not designate any person to have access to confidential information unless that person requires such access in order to carry out that person's responsibilities and duties. No person may disclose any confidential information except in accordance with the provisions of this section. No copies may be made except as strictly necessary for internal department use or as specified in subsection 8.
7. **Maintenance of log.** Persons designated by the department to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the date of such access.
8. **Transmittals of confidential information.** As necessary, confidential information acquired by the department under the provisions of the act, or this article, may be transmitted to such federal, state, or local agencies, when necessary for purposes of administration of any federal, state, or local air pollution control laws, which make an adequate showing of need to the department, provided that such transmittal is made under a continuing assurance of confidentiality.
9. **Relationship to issuance of permits.** The department may not process any application for a permit to construct or operate pursuant to chapter 33-15-14 or 33-15-15 until final agency action on confidential trade secret claims has been completed.

History: Effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-06

33-15-01-17. Enforcement.

1. Enforcement action will be consistent with procedures as approved by the United States environmental protection agency.
2. Notwithstanding any other provision in this article, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of this article.
 - a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
 - (1) A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.
 - (2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated in a federally enforceable title V permit to operate.
 - (3) Compliance test methods specified in this article.
 - b. The following testing, monitoring, and information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:
 - (1) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 50, 51, 60, 61, 63, and 75.
 - (2) Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in paragraph 1 or in subdivision a.
3.
 - a. No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this article.
 - b. No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring device or method required under this article.

History: Effective June 1, 1990; amended effective December 1, 1994; September 1, 1997; March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.
2. Any other monitoring method approved for the source under paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated into a federally enforceable title V permit to operate.

History: Effective December 1, 1994; amended effective March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-02
AMBIENT AIR QUALITY STANDARDS

Section

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

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

History: Amended effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

History: Amended effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. The public health will be protected including sensitive or susceptible segments of the population.
2. Concentrations of pollutants will not cause public nuisance or annoyance.
3. Agricultural crops, animals, forest, and other plant life will be protected.
4. Visibility will be protected.
5. Metals or other materials will be protected from abnormal corrosion or damage.
6. Fabrics will not be soiled, deteriorated, or their colors affected.

7. Natural scenery will not be obscured.

History: Amended effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. **Particulates and gases.** The standards of ambient air quality listed in table 1 and table 2 define the limits of air contamination by particulates and gases. Any air contaminant which exceeds these limits is hereby declared to be unacceptable and requires air pollution control measures. The stated limits include normal background levels of particulates and gases.
2. **Radioactive substances.** The ambient air shall not contain any radioactive substances exceeding the concentrations specified in article 33-10.
3. **Other air contaminants.** The ambient air shall not contain air contaminants in concentrations that would be injurious to human health or well-being or unreasonably interfere with the enjoyment of property or that would injure plant or animal life. The department may establish, on a case-by-case basis, specific limits of concentration for these contaminants.

History: Amended effective October 1, 1987; January 1, 1989; September 1, 1998; April 1, 2011.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

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

History: Amended effective October 1, 1987; December 1, 1994.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-02-06. Reference conditions. The standards of ambient air quality listed in table 1 are corrected to a reference temperature of twenty-five degrees Celsius [298 degrees Kelvin] and a reference pressure of seven hundred sixty millimeters of mercury [101.3 kilopascals].

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

1. No person may cause or permit the emission of contaminants to the ambient air from any source in such a manner and amount that causes or contributes to a violation in the ambient air of those standards stated in section 33-15-02-04.
2. Nothing in any other part or section of this article may in any manner be construed as authorizing or legalizing the emission of air contaminants in such manner as prohibited in subsection 1.

History: Amended effective October 1, 1987; September 1, 1998; April 1, 2011.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

Table 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)	
Particulates		
PM ₁₀	150	micrograms per cubic meter, 24 hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is equal to or less than one.
PM _{2.5}	15.0 <u>12.0</u>	micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 15.0 <u>12.0</u> micrograms per cubic meter.
	35	micrograms per cubic meter 24-hour average concentration. The standard is met when the 98 th percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.
Sulfur Dioxide	0.075	parts per million (196 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 99 th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.075 parts per million, as determined in accordance with 40 CFR 50, Appendix T.
	0.5	parts per million (1309 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year.
Hydrogen Sulfide	10.0	parts per million (14 milligrams per cubic meter of air), maximum instantaneous (ceiling) concentration not to be exceeded
	0.20	parts per million (280 micrograms

		per cubic meter of air), maximum 1-hour average concentration not to be exceeded more than once per month
	0.10	parts per million (140 micrograms per cubic meter of air), maximum 24-hour average concentration not to be exceeded more than once per year
	0.02	parts per million (28 micrograms per cubic meter of air), maximum arithmetic mean concentration averaged over three consecutive months
Carbon Monoxide	9	parts per million (10 milligrams per cubic meter of air), maximum 8-hour concentration not to be exceeded more than once per year
	35	parts per million (40 milligrams per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year
Ozone	0.075	parts per million (147 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the three year average of the annual fourth-highest daily maximum 8-hour average concentration at an ambient air quality monitoring site is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR 50, Appendix P.
Nitrogen Dioxide	0.053	parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean
	0.100	parts per million (188 micrograms per cubic meter) 1-hour average concentration. The standard is met when the a 3-year average of the annual 98 th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 parts per million, as determined in accordance with 40 CFR 50, Appendix S.
Lead	0.15	micrograms per cubic meter of air, arithmetic mean averaged over

a 3-month rolling period.

The standard is met when the maximum 3-month mean concentration for a 3 year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.

History: Amended effective December 1, 1994, April 1, 2009; April 1, 2011.

Table 2. NATIONAL AMBIENT AIR QUALITY STANDARDS

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

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

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

CHAPTER 33-15-03
RESTRICTION OF EMISSION OF VISIBLE AIR CONTAMINANTS

Section	
33-15-03-01	Restrictions Applicable to Existing Installations
33-15-03-02	Restrictions of Applicable to New Installations and all Incinerators
33-15-03-03	Restrictions Applicable to Fugitive Emissions
33-15-03-03.1	Restrictions Applicable to Flares
33-15-03-04	Exceptions
33-15-03-05	Method of Measurement

33-15-03-01. Restrictions applicable to existing installations. No person may discharge into the ambient air from any single source of emission whatsoever, with the exception of existing incinerators, any air contaminant which exhibits an opacity greater than forty percent except that a maximum of sixty percent opacity shall be permissible for not more than one six-minute period per hour. Provided, however:

1. In consideration of public health and welfare, when it becomes both technically and economically feasible, the source shall comply with visible air contaminant restrictions as outlined in section 33-15-03-02 when directed by the department.
2. Any existing source which has installed control technology capable of complying with the visible air contaminant restrictions applicable to new installations shall comply with section 33-15-03-02 when directed by the department.
3. If any party is aggrieved by the department's decision as referenced in subsections 1 and 2, that party may request a hearing before the department to review such decision. Such hearing must be conducted according to article 33-22 and North Dakota Century Code chapter 28-32. If a hearing is requested, the requirements of section 33-15-03-02 are not effective until ordered by the department at the conclusion of the hearing process.

History: Amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-02. Restrictions applicable to new installations and all incinerators. No person may discharge into the ambient air from any single source of emission whatsoever any air contaminant which exhibits an opacity greater than twenty percent except that a maximum of forty percent opacity is permissible for not more than one six-minute period per hour.

History: Amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-03. Restrictions application to fugitive emissions. No person may discharge into the ambient air from any source of fugitive emissions, as determined or identified by the department, any air contaminant which exhibits an opacity greater than forty percent for more than one six-minute period per hour. Such visible emissions shall have been visibly transported off the property of emission origination and remains visible to an observer positioned off said property when sighting along a line which does not cross the property of emission origination.

History: Amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-03.1. Restrictions applicable to flares. No person may discharge into the ambient air from any single source of emission whatsoever any air contaminant which exhibits an opacity greater than twenty percent except that a maximum of sixty percent opacity is permissible for not more than one six-minute period per hour.

History: Effective February 1, 1982; amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

33-15-03-04. Exceptions. The provisions of sections 33-15-03-01, 33-15-03-02, 33-15-03-03, and 33-15-03-03.1 shall not apply in the following circumstances:

1. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements.
2. When smoke is emitted for the purpose of training or research when approved by the department, including training schools for firefighting personnel.
3. Where an applicable opacity standard is established in a federally enforceable permit issued pursuant to this article for a specific source.
4. [Reserved]
5. Where fugitive emissions are caused by agricultural activities related to the normal operations of a farm. However, agricultural practices such as tilling of land, application of fertilizers, harvesting of crops, and other activities shall be managed in such a manner as to minimize dust from becoming airborne.

History: Amended effective February 1, 1982; January 1, 2013.

General Authority: NDCC 23-25-03, 28-32-01

Law Implemented: NDCC 23-25-03

33-15-03-05. Method of measurement.

1. Method 9. Compliance with visible emission standards in chapter 33-15-03 shall be determined by conducting observations in accordance with Reference Method 9 of Appendix A to chapter 33-15-12. Per hour for Reference Method 9 means any contiguous sixty-minute time period. When Reference Method 9 opacity readings are not available, continuous opacity monitors may be substituted. Per hour for monitors means any sixty-minute period commencing on the hour. The results of continuous monitoring by transmissometer, which indicate that the opacity at the time visible emissions were taken, were not in excess of the standard, are probative but not conclusive evidence of the actual opacity of an emission; provided, that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.

2. Method 22. When a visible emissions limit is specified in a permit issued in accordance with this article as zero percent opacity except for a certain frequency, compliance shall be determined using Reference Method 22 of Appendix A to chapter 33-15-12.

History: Amended effective October 1, 1987.

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

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-04
OPEN BURNING RESTRICTIONS

Section

33-15-04-01 Refuse Burning Restrictions

33-15-04-02 Permissible Open Burning

33-15-04-01. Refuse burning restrictions. No person may cause, conduct, or permit open burning of refuse, trade waste, or other combustible material, except as provided for in section 33-15-04-02 or 33-15-10-02, and no person may conduct, cause, or permit the conduct of a salvage operation by open burning.

History: Amended effective October 1, 1987; January 1, 1989; January 1, 1996; January 1, 2007.

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

Law Implemented: NDCC 23-25-03

33-15-04-02. Permissible open burning. The open burning of refuse or other combustible material may be conducted as specified in this section if the burning is not prohibited by, and is conducted in compliance with, other applicable laws, ordinances, and regulations. Burning is prohibited if the fire index is in the extreme category as issued by the national weather service or if a burning ban is declared by state or local officials. The authority to conduct open burning under this section does not exempt or excuse a person from the consequences, damages, or injuries that may result therefrom.

1. The following types of burning are specifically authorized but are subject to the conditions listed in subsection 2 as well as any condition included as part of this subsection:
 - a. Fires purposely set for the instruction and training of public and industrial firefighting personnel.
 - b. Fires set for the elimination of a fire hazard that cannot be abated by any other means when authorized by the department or its designee.
 - c. Fires set for the removal of dangerous or hazardous material, where there is no other practical or lawful method of disposal and burning is approved in advance by the department. Where there is imminent danger to human health or safety and where there is no other practical or lawful method of disposal, burning may be initiated without prior notice to the department, provided notice is furnished as soon as practical.

- d. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food.
 - e. Fires purposely set to forest or rangelands for a specific reason in the management of forest, rangeland, or game in accordance with practices recommended by state or federal agencies, as appropriate, and the burning is approved in advance by the department. The state or federal agency shall, upon request by the department, submit an annual report that estimates the number of acres burned, the fuel loading, and the amount of emissions.
 - f. The burning of trees, brush, grass, wood, and other vegetable matter in the clearing of land, right-of-way maintenance operations, and agricultural crop burning.
 - g. The burning of refuse and other combustible materials generated in the operation of a domestic household if the following conditions are met:
 - (1) No collection and disposal service is required or directed by a municipality or other government entity.
 - (2) The material to be burned is from a building accommodating no more than one family.
 - (3) The burning is conducted on the property on which the waste is generated.
 - h. The burning of liquid hydrocarbons that are spilled or lost as a result of pipeline breaks or other accidents involving the transportation of such materials or which are generated as wastes as the result of oil exploration, development, production, refining, or processing operations if the following conditions are met:
 - (1) The material cannot be practicably recovered or otherwise lawfully disposed of in some other manner.
 - (2) The burning must be approved in advance by the department, except as provided in subdivision c.
2. The following conditions apply to all types of permissible burning listed in subsection 1.
- a. ~~No public nuisance is or will be created.~~ Air pollution, as defined in section 33-15-01-04, will not be created.

- b. The burning must not be conducted upwind of, or in proximity to, an occupied building such that the ambient air of such occupied building may be adversely affected by the air contaminants being emitted.
- c. Care must be used to minimize the amount of dirt on the material being burned and the material must be dry enough to burn cleanly.
- d. Oils, rubber, and other materials that produce unreasonable amounts of air contaminants may not be burned.
- e. The burning may be conducted only when meteorological conditions favor smoke dispersion and air mixing.
- f. The burning must not be conducted adjacent to any highway or public road so as to create a traffic hazard.
- g. The burning must not be conducted adjacent to any operational military, commercial, county, municipal, or private airport or landing strip in such a manner as to create a hazard.
- h. Except in an emergency, burning may not be conducted in such proximity of any class I area, as defined in chapter 33-15-15, that the ambient air of such area is adversely impacted.
- i. Except in an emergency, the visibility of any class I area cannot be adversely impacted as defined in chapter 33-15-19.
- j. Burning activities must be attended and supervised at all times burning is in progress.
- k. If state or local fire officials determine conditions to be unsafe for open burning, such burning must cease until conditions are deemed safe by such officials.

History: Amended effective October 1, 1987; January 1, 1989; January 1, 1996; January 1, 2007.

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

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-06
EMISSIONS OF SULFUR COMPOUNDS RESTRICTED

Section	
33-15-06-01	Restriction of Emissions of Sulfur Dioxide From Use of Fuel
33-15-06-02	Restriction of Emissions of Sulfur Oxides From Industrial Processes
33-15-06-03	Methods of Measurement
33-15-06-04	Continuous Emission Monitoring Requirements
33-15-06-05	Reporting and Recordkeeping Requirements
33-15-06-06	Annual Emissions of Sulfur Dioxide

33-15-06-01. Restriction of emissions of sulfur dioxide from use of fuel.

1. General provisions.
 - a. Except as provided in subdivision c, this section applies to any installation in which fuel is burned and in which the sulfur dioxide emissions are substantially due to the content of the fuel burned, and in which the fuel is burned primarily to produce heat.
 - b. For purposes of this section, a fuel burning installation is any single fuel burning furnace or boiler or other unit, device, or contrivance in which fuel is burned or any grouping of two or more such furnaces or boilers or other units, devices, or contrivances on the same premises or otherwise located in close proximity to each other and under control of the same person. The capacity of such installations shall be the manufacturer's or designer's guaranteed maximum heat input rate.
 - c. This chapter does not apply to installations which are subject to a sulfur dioxide emission limit under chapter 33-15-12.
 - d. For purposes of this chapter, equipment at an oil and gas production facility, as defined in chapter 33-15-20, is considered industrial process equipment.
 - e. This chapter does not apply to installations that burn pipeline quality natural gas or A.S.T.M. commercial propane alone or in combination with each other. Installations that burn pipeline quality natural gas or A.S.T.M. commercial propane in combination with other fuels are subject to the requirements of this chapter.
2. Restrictions applicable to fuel burning installations. No person shall cause or permit the emission of sulfur dioxide to the ambient air from the fuel burning

installation in an amount greater than three and zero-tenths pounds of sulfur dioxide per million British thermal units [1290 nanograms/joule] of heat input to the installation on a one-hour block average basis. The department may establish alternative averaging periods provided the requirements of chapter 33-15-02 are met. All averaging periods must begin on the hour and averaging periods greater than one hour shall be rolling averages.

3. The department shall establish more restrictive emission limits for a source if it is determined that such source is causing the ambient air quality standards of chapter 33-15-02 or the prevention of significant deterioration increments of chapter 33-15-15 for sulfur dioxide to be exceeded. However, the department may consider alternative measures which will achieve compliance with the ambient air quality standards or prevention of significant deterioration increments.

History: Amended effective June 1, 1992; January 1, 1996; March 1, 2003.

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

Law Implemented: NDCC 23-25-03

33-15-06-02. Restriction of emissions of sulfur oxides from industrial processes.

1. General provisions. This section applies to all emissions except those in which all of the following are met:
 - a. Fuel is burned primarily to produce heat.
 - b. The sulfur compound emission is due primarily to the sulfur in the fuel burned.
2. Concentration of sulfur compounds in emissions restricted. The department shall establish emission limitations on the amount of sulfur dioxide, sulfur trioxide, and sulfuric acid which may be emitted into the ambient air from any source specified in subsection 1 in any area, if it is determined that such source is causing the ambient air quality standards of chapter 33-15-02 or the prevention of significant deterioration increments of chapter 33-15-15 for sulfur dioxide to be exceeded.

History: Amended effective June 1, 1992.

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

Law Implemented: NDCC 23-25-03

33-15-06-03. Methods of measurement. Testing must be done in accordance with the provisions of chapter 33-15-12, as applicable. The reference methods in appendix A to chapter 33-15-12, its replacement or applicable alternative methods as approved by the department, shall be used to determine compliance with this chapter as follows:

1. Method 1 for selection of sampling site and sample traverse.
2. Method 2 for stack gas velocity and volumetric flow rate.

3. Method 3 for gas analysis.
4. Method 4 for moisture content.
5. Method 6, 6A, 6C and 20, as applicable, for concentration of sulfur dioxide. The minimum sampling time shall be at least sixty minutes per run and a test shall consist of three runs.

For each run using method 6 for fuel burning equipment the emissions expressed in pounds per million British thermal units [nanogram per joule] shall be determined by the following procedures:

$$E = CF_d \left(\frac{20.9}{20.9 - \%O_2} \right) \text{ or } E = CF_c \left(\frac{100}{\% CO_2} \right)$$

where:

- (1) E = Pollutant emission, lb/million Btu [ng/j].
- (2) C = pollutant concentrations, lb/dscf [ng/dscm].
- (3) %O₂ = oxygen content by volume, dry basis.
- (4) %CO₂ = carbon dioxide content by volume, dry basis.

The percent oxygen and percent carbon dioxide shall be determined by using the integrated sampling and analysis procedures of method 3.

- (5) F_d and F_c = factors listed in method 19 of appendix A of chapter 33-15-12.

For facilities firing combinations of fuels the F_d or F_c factors designated in this section shall be prorated in accordance with the applicable formula as follows:

$$F_d = \sum_{i=1}^n x_i (F_d)_i \text{ or } F_c = \sum_{i=1}^n x_i (F_c)_i$$

where:

x_i = the fraction of total heat input derived from each type of fuel.

(F_d)_i or (F_c)_i = the applicable F_d or F_c factor for each fuel type.

n = the number of fuels being burned in combination.

History: Amended effective June 1, 1992; March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-06-04. Continuous emission monitoring requirements.

1. General provisions.
 - a. For sources subject to continuous emission monitoring requirements in their permit to operate, the monitoring systems must be used to demonstrate compliance with emission limits on a continuous basis after the initial compliance test and certification of the system.
 - b. Emission rates must be recorded in the units of the applicable standard. Conversion of monitor data to an emission rate expressed in pounds per million British thermal units [nanograms per joule] shall be calculated in accordance with the equations in section 33-15-06-03. Equations for calculating emission rates with different units will be supplied by the department.
2. Installation, operation, and certification. The installation, operation, and certification of continuous monitoring systems and monitoring devices must comply with the provisions of chapter 33-15-12 that apply to monitoring systems and monitoring devices.
3. Quality assurance. All continuous monitoring systems and monitoring devices must be recertified in accordance with the provisions of appendix B of chapter 33-15-12 every three years unless otherwise directed.

History: Effective June 1, 1992.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-04

33-15-06-05. Reporting and recordkeeping requirements.

1. Excess emissions reports. Not later than thirty days following the end of a calendar quarter, any owner or operator required to monitor emissions in accordance with section 33-15-06-04 shall submit a report of excess emissions to the department. The report must include the following information:
 - a. The magnitude of excess emissions, any conversion factor or factors used, and the date and time of commencement and completion of each time period of excess emissions.

- b. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.
 - c. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.
 - d. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired, or adjusted, such information must be stated in the report.
2. Records. Any owner or operator subject to continuous emission monitoring requirements shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by the department recorded in a permanent form suitable for inspection. The file must be retained for at least two years following the date of such measurements, maintenance, reports, and records.

History: Effective June 1, 1992.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

Section

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

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

33-15-12-01.1. Scope. Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60 (40 CFR 60) as they exist on ~~January 1, 2012~~ July 1, 2013, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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

Subpart A - General provisions.

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

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

Subpart C - Emission guidelines and compliance times.

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

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

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.
2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.
3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.
4. Complete onsite construction or installation of the air pollution control device or devices or process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.
5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.
6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

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

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

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

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

- (b) Except as provided in paragraphs c and d of this section, designated facilities shall comply with all requirements of this subpart within one year of the United States environmental protection agency's approval of the state plan for hospital/medical/infectious waste incinerators regardless of whether a designated facility is identified in the state plan. Owners or

operators of designated facilities who will cease operation of their incinerator to comply with this rule shall notify the department of their intention within six months of state plan approval.

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

- (c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the state plan, but not later than September 16, 2002 for the emission guidelines promulgated on September 15, 1997, and not later than October 6, 2014 for the emission guidelines promulgated on October 6, 2009, provided the facility owner or operator complies with the following:
1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.
 2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device(s) within nine months of state plan approval.
 3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.
 4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.
 5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.
 6. Begins initiation of site preparation for installation of the air pollution control device within twenty-two months after state plan approval.
 7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.
 8. Starts up the air pollution control device within twenty-eight months after state plan approval.

9. Notifies the department of the performance test thirty days prior to the test.
10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.
11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.

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

1. Designated facilities petitioning for an extension of the compliance time in paragraph b of this section shall, within six months after the United States environmental protection agency's approval of the state plan, submit:
 - i. Documentation of the analyses undertaken to support the need for more than one year to comply, including an explanation of why up to three years after United States environmental protection agency approval of the state plan is sufficient to comply with this subpart while one year is not. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and
 - ii. Documentation of measurable and enforceable incremental steps of progress to be taken toward compliance with this subpart.
2. The department shall review any petitions for the extension of compliance times within thirty days of receipt of a complete petition and make a decision regarding approval or denial. The department shall notify the petitioner in writing of its decision within forty-five days of the receipt of the petition. All extension approvals must include incremental steps of progress. For those sources planning on installing air pollution control equipment to comply with this subpart, the incremental steps of progress included in 40 CFR 60.39e(c) shall be included as conditions of approval of the extension.
3. Owners or operators of facilities which received an extension to the compliance time in this subpart shall be in compliance with the applicable requirements on or before the date three years after United States environmental protection agency approval of the state plan but not later than September 16, 2002 for the emission guidelines promulgated on September 15, 1997. For the amended emission guidelines published on October 6, 2009, compliance with the applicable requirements shall be attained on or before the date three years after United States environmental

protection agency approval of the amended state plan but not later than October 6, 2014.

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

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

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

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

*The limits and other requirements for mercury are deleted.

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

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

Subpart E - Standards of performance for incinerators.

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

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

Subpart F - Standard of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart H - Standards of performance for sulfuric acid plants.

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

Subpart J - Standards of performance for petroleum refineries.

Subpart Ja – Standards of performance for petroleum refineries for which construction, reconstruction, or modification commenced after May 14, 2007.

Those portions of the subpart that have been stayed are not adopted.

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

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

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

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

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

Subpart O - Standards of performance for sewage treatment plants.

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

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

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

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

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

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

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

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

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

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

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

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

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

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

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

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

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

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

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

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

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

Subpart VVa – Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after November 7, 2006.

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

Subpart XX - Standards of performance for bulk gasoline terminals.

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

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

Subpart CCC - [Reserved]

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

Subpart EEE - [Reserved]

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

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

Subpart GGGA – Standards of performance for equipment leaks of VOC in petroleum refineries for which construction, reconstruction, or modification commenced after November 7, 2006.

Those portions of the subpart that are stayed are not adopted.

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

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

Subpart JJJ - Standards of performance for petroleum drycleaners.

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

Subpart LLL - Standards of performance for onshore natural gas processing; SO₂ emissions.

Subpart MMM – [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

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

Except as provided below, designated facilities to which this rule applies shall comply with 40 CFR 60.2575 through 60.2875, including tables 1 through 9.

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

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

Table 1 to Subpart DDDD - Model Rule
Increments of Progress and Compliance Schedules

<u>CISWI Units That Commenced Construction On or Before November 30, 1999</u>	
Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan.....	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2 - Final compliance.....	Three years after EPA approval of

	the state plan or December 1, 2005, whichever comes first.
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<u>CISWI Units That Commenced Construction on or Before June 4, 2010</u>	
<u>Comply with these increments of progress</u>	<u>By these dates</u>
<u>Increment 1 - Submit final control plan.....</u>	<u>One year after EPA approval of the state plan or February 7, 2017, whichever comes first.</u>
<u>Increment 2 - Final compliance.....</u>	<u>Three years after EPA approval of the state plan or February 7, 2018, whichever comes first.</u>

Subpart GGGG – [Reserved]

Subpart IIII – Standards of performance for stationary compression ignition internal combustion engines.

Subpart JJJJ – Standards of performance for stationary sparks ignition internal combustion engines.

Subpart KKKK - Standards of performance for stationary combustion turbines.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate change.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner’s manual.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-12-03. [Reserved]

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

CHAPTER 33-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Section

- 33-15-15-01 General Provisions [Repealed]
- 33-15-15-01.1 Purpose
- 33-15-15-01.2 Scope
- 33-15-15-02 Reclassification

33-15-15-01. General provisions. Repealed effective February 1, 2005.

33-15-15-01.1. Purpose. The purpose of this chapter is to adopt by reference federal provisions for the prevention of significant deterioration program in North Dakota. The department will continue to implement the prevention of significant deterioration program as part of the state implementation plan.

History: Effective February 1, 2005.

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

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

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations Part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa) and (bb) as they exist on ~~January 1, 2012~~ July 1, 2013, are incorporated by reference into this chapter. This includes revisions to the rules that were published as a final rule in the Federal Register by this date but had not been published in the Code of Federal Regulations yet. Any changes or additions to the provisions are listed below the affected paragraph.

For purposes of this chapter, administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties listed below, or any others that cannot be delegated, administrator means the administrator of the United States environmental protection agency:

- (b)(17) - Definition of federally enforceable.
- (b)(37)(I) - Definition of repowering.
- (b)(43) - Definition of prevention of significant deterioration.
- (b)(48)(ii)(c) - Definition of baseline actual emissions.
- (b)(50)(I) - Definition of regulated NSR pollutant.
- (l)(2) - Air quality models.
- (p)(2) - Consultation with the Federal land manager.

For purposes of this chapter, permit or approval to construct means a permit to construct. The procedures for obtaining a permit to construct are specified in section 33-15-14-02 and this chapter. Where there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term “40 CFR 52.21” is replaced with “this chapter”.

- 40 CFR 52.21(b)(2)(iii)(a) The following is deleted:
Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section.
- 40 CFR 52.21(b)(3)(iii)(a) The words “the administrator or other reviewing authority” are replaced with “the department or the administrator of the U.S. environmental protection agency”.
- 40 CFR 52.21(b)(14) The following is added:
- (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.
- 40 CFR 52.21(b)(15) The following is added:
- (iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [pub. L. 95-95]: the Cass County portion of Region No. 130, the Metropolitan Fargo-Moorhead Interstate Air Quality Control Region; and Region No. 172, the North Dakota Intrastate Air Quality Control Region (the remaining fifty-two counties).
- 40 CFR 52.21(b)(22) The following is added:
- Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
- 40 CFR 52.21(b)(29) The following is added:
- This term does not include effects on integral vistas.
- 40 CFR 52.21(b)(30) The term section 51.100(s) of this chapter is deleted and replaced with “40 CFR 51.100(s).”

- 40 CFR 52.21(b)(43) The paragraph is deleted in its entirety and replaced with the following:
- Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the U.S. environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.
- 40 CFR 52.21(b)(48)(ii) The following words are deleted: “by the administrator for a permit required under this section or”.
- 40 CFR 52.21(b)(49) The following words are deleted “administrator in subchapter C of this chapter” and replaced with the following:
- Administrator of the United States environmental protection agency in title 40, code of federal regulations, chapter I, subchapter C.
- 40 CFR 52.21(b)(49)(i) “§ 86.181-12(a) of this chapter” is deleted and replaced with: 40 CFR 86.1818-12(a).
- 40 CFR 52.21(b)(49)(ii)(a) “Table A-1 to subpart A of part 98 of this chapter” is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1.
- 40 CFR 52.21(b)(50)(i)(c) This paragraph is deleted in its entirety and replaced with the following:
- Nitrogen oxides are a precursor to PM_{2.5} in all attainment and unclassifiable areas.
- 40 CFR 52.21(b)(50)(i)(d) This paragraph is deleted in its entirety and replaced with the following:
- Volatile organic compounds are not a precursor to PM_{2.5} in any attainment or unclassifiable areas.
- 40 CFR 52.21(b)(51) The paragraph is deleted in its entirety and replaced with the following:
- Reviewing authority means the department.

40 CFR 52.21(b)(53) This paragraph is deleted in its entirety and replaced with the following:

Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.

40 CFR 52.21(b)(54) This paragraph is deleted in its entirety and replaced with the following:

Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.

40 CFR 52.21(b)(58) This paragraph is deleted in its entirety.

40 CFR 52.21(d) The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed:

- (1) The concentration permitted under the national primary and secondary ambient air quality standards.
- (2) The concentration permitted by the ambient air quality standards in chapter 33-15-02.

40 CFR 52.21(e) The following is added:

- (5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.

40 CFR 52.21(h) The paragraph is deleted and replaced with the following:

The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.

40 CFR 52.21(i) The following subparagraphs are added:

- (11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have

been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.

- (12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

40 CFR 52.21(k)(1) This subparagraph is deleted and replaced with the following:

- (1) Any national ambient air quality standard or any standard in chapter 33-15-02.

40 CFR 52.21(l)(1) This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix W of 40 CFR 51 (“guideline on air quality models” as it exists on January 1, 2012) as supplemented by department guidance. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.

40 CFR 52.21(m)(3) “Appendix B to part 58 of this chapter” is replaced with 40 CFR 58, appendix B.

40 CFR 52.21(p)(6) “paragraph (q)(4)” is replaced with “paragraph (p)(4)” and “(q)(7)” is replaced with “(p)(7)”

40 CFR 52.21(p)(7) “paragraph (q)(7)” is replaced with “paragraph (p)(7)”

40 CFR 52.21(p)(8) “paragraphs (q)(5) or (6)” is replaced with “paragraphs (p)(5) or (6)”

40 CFR 52.21(p) The following is added:

- (9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major

modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.

40 CFR 52.21(q)

This paragraph is deleted and replaced with the following:

q. Public participation.

- (1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.
- (2) With respect to a completed application, the department shall:
 - (a) Within one year after receipt, make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
 - (b) Make available in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.
 - (c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least 30 days for public comment.
 - (d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having

cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.

- (e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required and other appropriate considerations.
- (f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than thirty days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department may extend the time to respond to comments based on a written request by the applicant. The department shall consider the applicant's response in making its final decision. All comments must be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.
- (g) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
- (h) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

40 CFR 52.21(r)(2)

The following is added:

In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

40 CFR 52.21(v)(1)

This subparagraph is deleted and replaced with the following:

- (1) An owner or operator of any proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

40 CFR 52.21(v)(2)(iv)(a)

This subitem is deleted and replaced with the following:

- (a) Cause or contribute to a violation of an applicable national ambient air quality standard or any ambient air quality standard in chapter 33-15-02; or

40 CFR 52.21(w)(1)

This subparagraph is deleted and replaced with the following:

- (1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

40 CFR 52.21(aa)(15)

This paragraph is deleted in its entirety.

History: Effective February 1, 2005; April 1, 2009; April 1, 2011; January 1, 2013.

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

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

33-15-15-02. Reclassification.

1. **Reclassification of areas.** All areas (except as otherwise provided under 40 CFR 52.21(e)) must be designated either class I, class II, or class III. Any designation other than class II is subject to the redesignation procedures of this section. Redesignation (except as otherwise precluded by 40 CFR 52.21(e)) is subject to approval by the administrator of the United States environmental protection agency.
 - a. **Reclassification by petition.**
 - (1) **Filing of petition.** After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor

at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition for reclassification only if such reclassification is substantially supported by the hearing record.

(2) Contents of petition. The petition to reclassify any area to either class I, class II, or class III must contain a legal description of the area which the petition is to affect; an explanation of the meaning and purpose of the petition and reclassification; a statement to the effect that those persons signing the petition desire the described area to be reclassified to either class I, class II, or class III and such statement must specify which class; a list of those persons or person circulating such petition, which persons must be designated "Committee of Petitioners"; an affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated such petition and that each of the signatures to such petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated; all petitions' signatures must be numbered and dated by month, day, and year, and the name must be written with residence address and post-office address including the county of residence followed by state of North Dakota.

b. Reclassification upon department's own motion. At such time as the department may determine, it may hold a public hearing and take such other action as specified in subsection 2 in order to reclassify any area of this state (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III. The department shall reclassify the area proposed for reclassification only if such reclassification is substantially supported by the hearing record.

2. **Procedures for reclassification.**

a. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to either class I or class II pursuant to subdivisions a and b of subsection 1, provided that:

(1) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with the procedures established in subsection 3.

- (2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation are notified at least thirty days prior to the public hearing.
- (3) A discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation is prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion.
- (4) Prior to the issuance of notice respecting the redesignation of any area that includes any federal lands, the state shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty days) to confer with the state respecting the redesignation and to submit written comments and recommendations with respect to such redesignation. In redesignating any area with respect to which any federal land manager has submitted written comments and recommendations, the state shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager).
- (5) The proposed redesignation is based on the record of the state's hearing, which must reflect the basis for the proposed redesignation, including consideration of:
 - (a) Growth anticipated in the area.
 - (b) The social, environmental, health, energy, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and states.
 - (c) Any impacts of such proposed redesignation upon regional or national interests. Anticipated growth shall include growth resulting both directly and indirectly from proposed development.
- (6) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

- b. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands but excluding lands within the exterior boundaries of any Indian reservations, to class III if:
- (1) Such redesignation would meet the requirements of subdivision a.
 - (2) Such redesignation has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislative assembly if it is in session or with the leadership of the legislative assembly if it is not in session, and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation or pass resolutions concurring the state's redesignation.
 - (3) Such redesignation will not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area, or any applicable ambient air quality standard.
 - (4) Prior to any public hearing on redesignation of any area, there must be available, insofar as is practicable for public inspection, any specific plans for any new major stationary source or major modification which may be permitted to be constructed and operated only if the area in question is redesignated as class III.

3. **Reclassification hearings.**

- a. Any hearing required by subsection 2 shall be held only after reasonable notice, which shall be considered to include, at least thirty days prior to the date of such hearing:
- (1) Notice given to the public by prominent advertisement in the region affected announcing the date, time, and place of such hearing.
 - (2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.
 - (3) Notification to the administrator of the United States environmental protection agency (through the appropriate regional office).
 - (4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply.

- (5) In the case of an interstate region, notification to any other states included, in whole or in part, in the region.
 - (6) Notification to any states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation.
- b. The department shall prepare and retain for inspection a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.
 - c. Any hearing held pursuant to the provisions of this subsection must be held only for the purpose of considering such reclassification as has been noticed under the provisions of subsection 2, and consideration of reclassification to other classes not so noticed shall not be allowed.
 - d. Any hearing held pursuant to these provisions may be continued for such purposes and for such periods of time as the department may determine.
4. **Time limitation.** Notwithstanding any other regulation herein, the department shall rule upon any proposed reclassification within eighteen months of the official public notification of such proposed redesignation by the department.

History: Amended effective July 1, 1982; October 1, 1987; January 1, 1989; March 1, 1994; February 1, 2005.

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

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-22
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FOR SOURCE CATEGORIES

Section

- 33-15-22-01 Scope
- 33-15-22-02 Definitions
- 33-15-22-03 Emissions Standards

33-15-22-01. Scope. The subparts and appendices of 40 Code of Federal Regulations, part 63 [40 CFR 63] as they exist on ~~January 1, 2012~~ July 1, 2013, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective January 1, 1996; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-02. Definitions. For the purposes of this chapter:

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

History: Effective December 1, 1994; amended effective February 1, 2005.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-03. Emissions standards.

Subpart A - General provisions

Subpart B - Requirements for control technology determinations for major sources in accordance with Federal Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C -List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emissions standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emissions standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emissions standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emissions standards for dry cleaning facilities.

Subpart N - National emissions standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emissions standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emissions standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emissions standards for halogenated solvent cleaning.

Appendix A to subpart T - Test of solvent cleaning procedures.

Appendix B to subpart T - General provisions applicability to subpart T.

Subpart CC - National emissions standards for hazardous air pollutants from petroleum refineries.

Subpart GG - National emissions standards for aerospace manufacturing and rework facilities.

Subpart HH - National emission standards for hazardous air pollutants from oil and natural gas production facilities.

* Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart JJ - National emissions standards for wood furniture manufacturing operations.

Subpart KK - National emissions standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Subpart OO - National emissions standards for tanks - Level 1.

Subpart PP - National emissions standards for containers.

Subpart QQ - National emissions standards for surface impoundments.

Subpart RR - National emissions standards for individual drain systems.

Subpart SS - National emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

Subpart TT - National emission standards for equipment leaks - control level 1.

Subpart UU - National emission standards for equipment leaks - control level 2 standards.

Subpart VV - National emissions standards for oil-water separators and organic water separators.

Subpart WW - National emission standards for storage vessels (tanks) - Control level 2.

Subpart YY - National emission standards for hazardous air pollutants for source categories: generic maximum achievable control technology standards.

Subpart HHH - National emission standards for hazardous air pollutants from natural gas transmission and storage facilities.

Subpart RRR - National emission standards for hazardous air pollutants for secondary aluminum production.

Table 1 to Subpart RRR - Emission standards for new and existing affected sources.

Table 2 to Subpart RRR - Summary of operating requirements for new and existing affected sources and emission units.

Table 3 to Subpart RRR - Summary of monitoring requirements for new and existing affected sources and emission units.

Appendix A to Subpart RRR - General provisions applicability to Subpart RRR.

Subpart UUU - National emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.

Subpart AAAA - National emission standards for hazardous air pollutants: municipal solid waste landfills.

Subpart CCCC - National emission standards for hazardous air pollutants: manufacturing of nutritional yeast.

Subpart EEEE – National emission standards for hazardous air pollutants: organic liquids distribution (non-gasoline).

Subpart FFFF - National emission standards for hazardous air pollutants: miscellaneous organic chemical manufacturing.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart MMMM - National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.

Subpart VVVV - National emission standards for hazardous air pollutants for boat manufacturing.

Subpart WWWW - National emissions standards for hazardous air pollutants: reinforced plastics composites production.

Subpart YYYYY – National emission standards for hazardous air pollutants for stationary combustion turbines.

Subpart ZZZZ - National emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines.

* Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart DDDDD – National emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters.

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

Subpart UUUUU – National emission standards for hazardous air pollutants: coal and oil-fired electric utility steam generating units.

Subpart JJJJJ – National emission standards for hazardous air pollutants for industrial, commercial and institutional boilers area sources.

*Only the requirements that are applicable to boilers with a heat input of ten million Btu per hour or more are adopted.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (F_{bio}) in a biological treatment unit.

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

Authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective January 1, 1996; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-23
FEEES

Section

- 33-15-23-01 Definitions
- 33-15-23-02 Permit to Construct Fees
- 33-15-23-03 Minor Source Permit to Operate Fees
- 33-15-23-04 Major Source Permit to Operate Fees
- 33-15-23-05 Phase I Substitution Units.

33-15-23-01. Definitions. For purposes of this chapter:

1. "Major source" means any source that has been issued or is required by this article to obtain a title V permit to operate. This includes sources that have begun operation but have not yet applied for a title V permit to operate.
2. "Minor source" has the meaning given to it in section 33-15-14-01.1.
3. "Regulated contaminant" means any "regulated air contaminant", as defined in section 33-15-14-06, except the following:
 - a. Carbon monoxide.
 - b. Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.
 - c. Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

History: Effective August 1, 1995; amended effective February 1, 2005.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-23-02. Permit to construct fees. Any person constructing, installing, or establishing a new stationary source or altering an existing source which requires a permit to construct under subsections 1 and 3 of section 33-15-14-02 is required to pay a permit to construct application filing fee and a permit to construct processing fee to the state department of health.

1. **Application fee.** A nonrefundable filing fee of one hundred fifty dollars must be submitted with the permit application.

2. **Processing fee.** The applicant shall pay a processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources which would involve a major analysis the cost of which would exceed one hundred fifty dollars as determined by the department. The following procedures and criteria will be utilized in establishing the fee:
 - a. A record of all permit to construct application processing costs incurred must be maintained by the department.
 - b. Upon request, the department, in consultation with the applicant, will prepare an estimate of the processing fee and the billing schedule that will be utilized in processing the application. If the applicant chooses, the applicant may withdraw the application at this point without paying any processing fees.
 - c. Statement(s) will be sent to the applicant containing the actual processing costs incurred by the department.
 - d. The applicant must pay the processing fee regardless of whether a permit to construct is issued, denied, or withdrawn.
 - e. Any source that initiates operation under a permit to construct prior to receiving a permit to operate is subject to the fees outlined in section 33-15-23-03 or 33-15-23-04, whichever is applicable.

History: Effective August 1, 1995; January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.2

33-15-23-03. Minor source permit to operate fees.

1. The owner or operator of each installation subject to a permit issued under section 33-15-14-03 shall pay an annual permit fee based on the following table:

<u>Classification</u>	<u>Annual Fee (\$)</u>
Designated	300
Other	100
State and local government	0
Exempt	0

The following criteria are used to classify sources for determining minor source annual fees:

Designated: A source that is designated for scheduled inspections.

Monitor: ~~A charge in addition to the annual fee for any source operating a continuous emission monitor system (CEMS) or an ambient monitoring site.~~

Other: As designated by the department.

State and local government: Any installation owned by the state of North Dakota or a local government.

Exempt: As designated by the department.

2. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:
 - a. Observation of source or performance specification testing, or both.
 - b. Audits of source operated ambient air monitoring networks.

An accounting of the actual costs incurred under this subsection must accompany the notice of the annual permit fee.

3. Annual emissions are derived using representative source test data, "compilation of air pollution emission factors (AP-42)" or other reliable data.
4. The classification of "other" and "exempt" shall be designated by the department on a case-by-case basis.
5. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.

History: Effective August 1, 1995; April 1, 2009; January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-04.2

33-15-23-04. Major source permit to operate fees.

1. The owner or operator of each installation that meets the applicability requirements of subsection 2 of section 33-15-14-06 shall pay an annual fee. The fee is determined by the actual annual emissions of regulated contaminants. Fugitive

emissions will be included in the fee calculation for sources that are required to count them when determining applicability under section 33-15-14-06.

2. Effective January 1, 2005, the annual fee shall be assessed at a rate of twenty-five dollars per ton of emissions of each regulated contaminant identified in section 112(b) of the Federal Clean Air Act. All other regulated contaminants will be assessed a fee at a rate of twelve dollars per ton. The minimum fee will be five hundred dollars per source.
3. In determining the amount due, that portion of any regulated contaminant which is emitted in excess of four thousand tons [3628.74 metric tons] per year will be exempt from the fee calculation.
4. Each boiler with a heat input greater than two hundred fifty million British thermal units per hour will be assessed fees on an individual basis and independent of the fees associated with the rest of the installation. The four thousand ton [3628.74 metric ton] per year cap referenced in subsection 3 is applied to each boiler.
5. Any state-owned or local government-owned facility is exempt from the fee.
6. The fee calculation must be based upon actual annual emissions from the previous calendar year.
7. The fee must be calculated independently for each installation, facility, source, or unit which has been issued a separate permit to operate.
8. The fee rates and the limits established under subsection 2 may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-one of each calendar year.
9. Any source that qualifies as a "small business" under section 507 of the Federal Clean Air Act may petition the department to reduce or exempt any fee required under this section. Sufficient documentation of the petitioner's financial status must be submitted with the request to allow the department to evaluate the request.
10. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.
11. Greenhouse gases are exempt from the fees in this section.

History: Effective August 1, 1995; amended effective February 1, 2005; January 1, 2007; April 1, 2009; January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.2

33-15-23-05. Phase I substitution units. Substitution units, as defined in 40 CFR part 72, shall pay an annual administrative fee equal to one hundred thousand dollars per source. This fee must be adjusted on an annual basis to account for any increase in the consumer price index. The adjustment shall be made on August thirty-one of each year and shall be based on the department of labor's published change in the index.

History: Effective August 1, 1995.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-04.2

33-15-23-06. Oil and gas well production facilities. The owner or operator of an oil and gas well production facility that is required to register the facility in accordance with section 33-15-20-02 shall pay a nonrefundable filing fee of one hundred fifty dollars per well. The filing fee must be submitted with the registration form.

History: Effective January 1, 2013.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.2