

June 17, 2022

VIA Email: jillgrossman@ndlegis.gov

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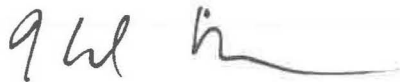
Dear Ms. Grossman:

The Notice of Intent to Adopt Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

If you have any questions, please contact me at 701-328-5225.

Thank you.

Sincerely,



Karl Rockeman, P.E.
Division Director, Water Quality

KR:cal

Enclosures

FULL NOTICE OF INTENT TO ADOPT ADMINISTRATIVE RULES RELATING
TO ARTICLE 33.1-04 - ENVIRONMENTAL RESTORATION

TAKE NOTICE that the North Dakota Department of Environmental Quality will hold a public hearing to address proposed **new** N.D. Admin. Code **article 33.1-04** at **1:30 PM - CST** on August 4th, 2022 at the Department's office building located at 4201 Normandy St., Bismarck, ND. Meeting room 223 will be available to the public for this meeting.

The purpose of the proposed **rule** is to establish the process to utilize the Environmental Quality Restoration Fund based on the provisions of N.D.C.C. 23.1-10-15 and other changes adopted by Senate Bill 2070 during the 2021 Regular Legislative Session. The proposed **rules** address the procedure for using environmental quality restoration funds at sites on the North Dakota Environmental Priorities List whose eligibility will be determined by the Department.

The proposed **rules are not** expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules and regulatory analysis may be obtained by visiting the Department's public notice website link at deq.nd.gov/PublicNotice.aspx, writing to the Department at 4201 Normandy St., Bismarck, ND 58503-1324, sending an email to krockema@nd.gov, or calling 701.328.5210. Also, written or oral comments on the proposed rules sent to the above address, email, or telephone number and received by August 22, 2022 will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Department at the above telephone number or address at least two days prior to the public hearing.

Dated this 17th day of June, 2022.

Karl Rockeman, P.E., Director
Division of Water Quality
North Dakota Department of Environmental Quality

REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08
TO ADOPT NORTH DAKOTA ADMINISTRATIVE CODE ARTICLE 33.1-04
ENVIRONMENTAL RESTORATION

Classes of People Probably Affected

The proposed rules administering the Environmental Quality Restoration Fund have the potential to affect new and existing industries, and property owners.

Probable Impact

The Department will be able use the fund for activities for remedial actions or investigative activities. The Department will determine on a case-by-case basis if a location is appropriate for the above activities and will be added to the North Dakota Environmental Priorities List. The Department will determine eligibility pending the following:

1. The contaminant of concern at the subject property should be identified. If no contaminant of concern has been identified, there should be at least one recognized environmental condition documented at the site.
2. The subject property must be assessed by the Department to determine if the site conditions support the listing of the site, and to determine the priority of the listed site.
3. The subject property must not be eligible for, or should have exhausted, any other state or federal funding sources. Private funding sources may still be available.
4. The responsible party must be identified, if possible.
5. Any other information the Department deems relevant.

The inclusion of a site on the North Dakota Environmental Priorities List does not guarantee any funding or corrective action will be completed. The Department will post on its website the North Dakota Priorities List and any revisions to the list.

Economic Impact

This action is not expected to have an impact on the regulated community in excess of \$50,000. Other than the expenditures for investigative work/remedial action and creation of a priorities list, there is no anticipated economic impact on regulated entities.

The proposed rule will provide an economic gain by adding value to previously contaminated properties that were previously restricted in their use.

Cost to Agency and Effect on State Revenues

Additional staff time required to implement and enforce the changes to the rules will be minimal as the Department already has the responsibility to oversee remediation work.

Alternative Methods Considered

The Department could choose to not adopt the changes. If this occurred, there would be no method to prioritize sites that may have no other way of addressing contamination on the property or to engage in partnership with private entities.

Data Assessments

Current Department practices were reviewed along with the history of past cleanup activities.

TAKINGS ASSESSMENT PURSUANT TO
NORTH DAKOTA CENTRURY CODE 28-32-09
TO ADOPT NORTH DAKOTA ADMINSTRATIVE CODE ARTICLE 33.1-04
ENVIRONMENTAL RESTORATION

Assessment

The proposed rules establish the process to utilize the Environmental Quality Restoration Fund. The proposed rules will not limit the use of a landowner's private real property and will therefore not result in a regulatory taking.

Purpose

The purpose of the proposed rules is to create a procedure for using environmental quality restoration funds at sites on the North Dakota Environmental Priorities List. The Department will only use the environmental quality restoration funds to fund activities authorized under NDCC Chapter 23.1-10.

Alternative

No alternative is available.

Potential Costs

There will be no additional costs since the proposed rules do not raise any additional revenue. There will not be an increase to staff since there is minimum estimated increased workload.

Source of Payment

There will be no source of payment within the agency's or board's budget since there will be no potential takings costs to the Department.

Cost Benefit

Since there will be no additional cost associated with the rules, any benefits achieved will exceed the costs.

SMALL ENTITY ECONOMIC IMPACT STATEMENT PURSUANT TO
NORTH DAKOTA CENTURY CODE 28-32-08.1
TO ADOPT NORTH DAKOTA ADMINISTRATIVE CODE ARTICLE 33.1-04
ENVIRONMENTAL RESTORATION

The following statement is prepared to comply with the requirements for changes to the North Dakota Administrative Code (N.D.A.C.) Chapter 33.1-04, Environmental Restoration

The small entity economic impact state examines the economic impact from proposed rules on small entities. The small entity economic impact statement must contain the following:

Which small entities may be subject to the proposed rule: All entities that are defined as small in N.D.C.C. § 28-32-08.1 that are determined to be eligible for the Environmental Priorities List.

Administrative or other cost will be required for small entities to comply with the proposed rule:

The Department may enter into a cost-sharing agreement with an owner of a listed site that is not a responsible party. Cost-sharing agreements involve the site owner voluntarily conducting Department-approved activities and receiving partial reimbursement from the Department for the costs of those approved activities.

Violation of cost-sharing requirements. The site owner must repay cost-share funds to the Department if:

1. Response actions have been conducted in a way or manner that is not in compliance with the voluntary response action plan;
2. The site owner has failed to comply with, or violated, the voluntary cleanup agreement;
3. The site owner fails to comply with the terms and conditions of the cost-sharing agreement;
4. The site owner's remedial actions cause, or contribute to, additional contamination of the listed property; or
5. The site owner's remedial actions cause, or contribute to, contamination at properties other than the subject property.

All other proposed changes to the rule are not expected to have any economic impact on small entities.

Probable cost and benefit to private persons and consumers who may be affected by the proposal: No effect on the consumer or private persons that do not own the site in question.

Probable effect of the proposed rules on State revenue: No effect on state revenues is anticipated.

Are there less intrusive or costly ways of achieving the proposed rule's purpose: By adopting the ability to use voluntary response agreements to partner with private entities, this is the least intrusive option.

SMALL ENTITY REGULATORY ANALYSIS PURSUANT TO
NORTH DAKOTA CENTURY CODE SECTION 28-32-08.1
TO ADOPT NORTH DAKOTA ADMINISTRATIVE CODE ARTICLE 33.1-04
ENVIRONMENTAL RESTORATION

The following analysis is prepared to comply with the requirements for adoption of North Dakota Administrative Code (N.D.A.C.) Article 33.1-04, Environmental Restoration.

The small entity regulatory analysis considers each of the possible ways the NDDEQ can enact rules that minimize the adverse impact on small entities by:

1. Establishing less stringent compliance or reporting requirements,
2. Establishing less stringent schedules or deadlines for compliance or reporting requirements,
3. Consolidating or simplifying compliance or reporting requirements,
4. Establishing performance standards that replace design or operational standards required in the proposed rule, and
5. Exempting from all or part of the rule's requirement.

The rules being enacted by the DEQ implement a voluntary program allowing current or future owners, who are not responsible for contamination, to partner with the DEQ to clean up contaminated property. As such there are no specific deadlines for compliance or reporting requirements and exemption from the rules would have the opposite effect of precluding their participation in this plan. The requirements that are included are the minimum necessary to ensure that funds expended on the cleanup are used appropriately, and that these rules do not incentivize polluters.

FISCAL NOTE PURSUANT TO
NORTH DAKOTA CENTURY CODE SECTION 28-32-08.2
TO ADOPT NORTH DAKOTA ADMINISTRATIVE CODE ARTICLE 33.1-04
ENVIRONMENTAL RESTORATION

BACKGROUND

North Dakota Century Code (N.D.C.C.) §28-32-08.2, requires the North Dakota Department of Environmental Quality (NDDEQ) to provide the Administrative Rules Committee with a fiscal note reflecting the effect of the rule changes on state revenues and expenditures, including any effect on funds controlled by the agency, or a statement that the rules have no fiscal effect.

COST TO AGENCY AND EFFECT ON STATE REVENUES

It is anticipated that there will be no significant fiscal cost to the agency to implement and enforce the proposed rules. The proposed rules will require no additional staff. The rules will require a small amount of additional time to implement. The additional time will be absorbed without adding staff, increasing management duties or employee training. No fiscal effect.