ARTICLE 33.1-15
AIR POLLUTION CONTROL

Chapter

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CHAPTER 33.1-15-01
GENERAL PROVISIONS

Section

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33.1-15-01-01. 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.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-02; S.L. 2017, ch. 199, § 21

33.1-15-01-02. Scope.

These air quality standards and emission regulations apply to any source or emission existing partially or wholly within North Dakota.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-03. Authority.

The department of environmental quality has been authorized to provide and administer this article under the provisions of North Dakota Century Code chapter 23.1-06.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-04. 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 23.1-06.

2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.

4. "Ambient air" means the surrounding outside air.

5. "ASME" means the American society of mechanical engineers.

6. "Coal conversion facility" means any of the following:

    a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.

    b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal

gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.

c. A coal beneficiation plant, and all additions thereto, which improve the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.

7. "Control equipment" means any device or contrivance which prevents or reduces emissions.

8. "Department" means the department of environmental quality.

9. "Emission" means a release of air contaminants into the ambient air.

10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable emission limit or emission standard specified in this article or a permit issued pursuant to this article.

11. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.

12. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to title 40 Code of Federal Regulations parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to title 40 Code of Federal Regulations 52.21 or under regulations approved pursuant to title 40 Code of Federal Regulations part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.

13. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

14. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.

15. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.

16. "Hazardous waste" has the same meaning as given by chapter 33.1-24-02.

17. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

18. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.

19. "Industrial waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23.1-04, 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 processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.

22. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.

23. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.

24. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.

25. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

26. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.

27. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

28. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.

29. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.

30. "Pesticide" includes:

    a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;

    b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscacides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.

31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.

32. "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths micrometers.

33. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

34. "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

35. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].

36. "Premises" means any property, piece of land or real estate, or building.

37. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

38. "Process weight rate" means the rate established as follows:

    a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

    b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

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

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 [1,144 degrees Kelvin to 1,255 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 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

47. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.

48. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].

49. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.

50. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.

51. "Trash" means refuse commonly generated by food warehouses, wholesalers, and retailers which is comprised only of nonrecyclable paper, paper products, cartons, cardboard, wood, wood scraps, and floor sweepings and other similar materials. Trash may not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash must be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste, and similar substances.

52. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on July 1, 2019, 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: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-05. Abbreviations.

The abbreviations used in this article have the following meanings:

A	-	ampere
A.S.T.M.	-	American Society for Testing and Materials
Btu	-	British thermal unit
°C	-	degree Celsius (centigrade)
cal	-	calorie
CdS	-	cadmium sulfide
cfm	-	cubic feet per minute
CFR	-	Code of Federal Regulations
cu ft	-	cubic feet
CO	-	carbon monoxide
CO_2	-	carbon dioxide
dcf	-	dry cubic feet
dcm	-	dry cubic meter
dscf	-	dry cubic feet at standard conditions
dscm	-	dry cubic meter at standard conditions
eq	-	equivalents
°F	-	degree Fahrenheit
ft	-	feet
g	-	gram
gal	-	gallon
g eq	-	gram equivalents
gr	-	grain
hr	-	hour
HCl	-	hydrochloric acid
Hg	-	mercury
H_2O	-	water
H_2S	-	hydrogen sulfide
H_2SO_4	-	sulfuric acid
Hz	-	hertz
in.	-	inch
j	-	joule
°K	-	degree Kelvin
k	-	1,000
kg	-	kilogram
l	-	liter
lpm	-	liter per minute
lb	-	pound

m	-	meter
m^3	-	cubic meter
meq	-	milliequivalent
min	-	minute
mg	-	milligram - 10^{-3} gram
Mg	-	megagram - 10^{6} gram
ml	-	milliliter - 10^{-3} liter
mm	-	millimeter - 10^{-3} meter
mol	-	mole
mol.wt.	-	molecular weight
mV	-	millivolt
N_2	-	nitrogen
N	-	newton
ng	-	nanogram - 10^{-9} gram
nm	-	nanometer - 10^{-9} meter
NO	-	nitric oxide
NO_2	-	nitrogen dioxide
NO_x	-	nitrogen oxides
O_2	-	oxygen
Pa	-	pascal
PM	-	particulate matter
$PM_{2.5}$	-	particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers
PM_{10}	-	particulate matter with an aerodynamic diameter less than or equal to a nominal 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: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-06. Entry onto premises - Authority.

Entry onto premises and onsite inspection shall be made pursuant to North Dakota Century Code section 23.1-06-11.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-11; S.L. 2017, ch. 199, § 21

33.1-15-01-07. 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: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-08. 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: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-09. 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.

History: Effective January 1, 2019.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-10. 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.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-11. [Reserved].

33.1-15-01-12. 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 23.1-06. All tests shall be made and the results calculated in accordance with test procedures approved or specified by the department. All tests shall be conducted by reputable, qualified personnel. The department shall be given a copy of the test results in writing and signed by the person responsible for the tests.

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

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

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

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-01-13. Shutdown and malfunction of an installation - Requirement for notification.

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the department at least twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:

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

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

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

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

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

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

2. **Malfunctions.**

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

estimated duration of the breakdown. The department shall be notified when the condition causing the malfunction has been corrected.

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

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

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

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

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

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

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

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

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

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

3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method for measuring or estimating emissions must be undertaken as soon as possible. The owner or operator of a source that uses an alternative method shall have the burden of demonstrating that the method is accurate. Timely repair of the emission monitoring system must be made. The provisions of this subsection do not apply to sources that are subject to monitoring requirements in chapter 33.1-15-21.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-01-14. 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.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-01-15. Prohibition of air pollution.

1. No person shall permit or cause air pollution, as defined in section 33.1-15-01-04.

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: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-01-16. 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 33.1-15-14 or 33.1-15-15 until final agency action on confidential trade secret claims has been completed.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-12; S.L. 2017, ch. 199, § 21

33.1-15-01-17. 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 33.1-15-14-06.

      (2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33.1-15-14-06 and incorporated in a federally enforceable title V permit to operate.

      (3) Compliance test methods specified in this article.

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

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

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

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

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

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-18. 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 33.1-15-14-06.

2. Any other monitoring method approved for the source under paragraph 3 of subdivision a of subsection 5 of section 33.1-15-14-06 and incorporated into a federally enforceable title V permit to operate.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21