CHAPTER 33.1-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

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

33.1-15-15-01.1. 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 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

33.1-15-15-01.2. Scope.

The provisions of title 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 July 1, 2019, 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 or the administrator's authorized representative:

(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.

(1)(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 33.1-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33.1-15-14-02, 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	The following is added:

52.21(b)(1)

For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).

40 CFR 52.21(b)(2) The following is added:

For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).

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).

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 United States 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)(23)(i) The following is added:

Greenhouse gases: 75,000 tpy CO_2 equivalent.

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 United States 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. The following is deleted: For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).
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 33.1-15-02.

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 33.1-15-18.

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:

(i) Any national ambient air quality standard or any standard in chapter 33.1-15-02.

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 July 1, 2018). 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 or on the department's website, 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 and by a notice on the department's website, of the application, the preliminary determination, draft permit to construct, 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 thirty 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 33.1-15-02; or

40 CFR 52.21(aa)(15) This paragraph is deleted in its entirety.

History: Effective January 1, 2019; amended effective July 1, 2020.
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

33.1-15-15-02. 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: 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