CHAPTER 33.1-15-16
RESTRICTION OF ODOROUS AIR CONTAMINANTS

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33.1-15-16-01. General provisions.

1. An odor will be considered objectionable when a department certified inspector or at least thirty percent of a randomly selected group of persons, or an odor panel exposed to the odor would deem that odor objectionable if the odor were present in their place of residence.

2. An "odor concentration unit" is defined as a volume of odor-free air mixed with an equal volume of odorous air such that the combination would be at the threshold level of the olfactory senses. The intensity of an odor is determined by the ratio of the volume of odor-free air that must be mixed with a standard volume of odorous air so that a department-certified inspector or at least fifty percent of an odor panel can still detect the odor in the diluted mixture.

3. A department-certified inspector is any person designated by the department who has successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odorous samples and concentrations. In the case of hydrogen sulfide (H_2S) complaints, the inspector will be competent with the hydrogen sulfide (H_2S) detection equipment being used.

4. An odor panel, if used, must consist of a minimum of five persons who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odorous samples and concentrations.

5. Odor emissions in excess of the limits stated in section 33.1-15-16-02 or 33.1-15-16-02.1, or both, will be addressed on a complaint basis.

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

33.1-15-16-02. Emissions of odorous substances restricted.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in North Dakota Century Code section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by North Dakota Century Code section 42-04-01 has been in operation for more than one year, as provided by North Dakota Century Code section 42-04-02, and the business or residence making the odor complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in North Dakota Century Code section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

   a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;

   b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or

   c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either North Dakota Century Code section 11-33-02 or 58-03-11, or if the setback distance under subsection 7 of North Dakota Century Code section 23.1-06-15 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [0.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the preexisting facility.

3. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the department. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department, including articles 33.1-16 and 33.1-20. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

4. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the department has established a specific limitation by rule.

5. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

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

33.1-15-16-02.1. Emissions of hydrogen sulfide restricted.

No person may discharge into the ambient air hydrogen sulfide (H_2S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally accessed by the general public. For the purpose of complaint resolution under this section, two samples with concentrations greater than 0.05 parts per million (50 parts per billion) sampled at least fifteen minutes apart within a two-hour period and measured in accordance with section 33.1-15-16-04 constitute a violation.

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

33.1-15-16-03. [Reserved].

33.1-15-16-04. Method of measurement.

An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the department, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this chapter, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement. In the case of hydrogen sulfide (H_2S) emissions, an ambient air analyzer designed for monitoring hydrogen sulfide (H_2S) must be the method used for determining the concentrations of emissions at the point of measurement, or other instrumental methods as approved 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

33.1-15-16-04.1. Regulation restriction.

Compliance with the provisions of this chapter does not operate as a defense to any legal action which is based upon the theory of public or private nuisance.

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