CHAPTER 33.1-15-19
VISIBILITY PROTECTION

Section
33.1-15-19-01 General Provisions
33.1-15-19-02 Review of New Major Stationary Sources and Major Modifications
33.1-15-19-03 Visibility Monitoring

33.1-15-19-01. General provisions.

1. **Applicability.** The provisions of this chapter apply to the owner or operator of a major stationary source or major modification, as defined in section33.1-15-15-01.2, whose construction or modification is commenced after August 12, 1985. The standards shall be applied in conjunction with the procedures set forth in chapters 33.1-15-12, 33.1-15-14, and 33.1-15-15.

2. **Definitions.** As used in this chapter, all terms not defined herein shall have the meaning given them in section 33.1-15-01-04, 33.1-15-12-01, or 33.1-15-15-01.2 or in North Dakota Century Code chapter 23.1-06.

   a. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with times of visitor use of the federal class I area, and the frequency and timing of natural conditions that reduce visibility.

   b. "Natural conditions" include naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

   c. "Visibility impairment" means any humanly perceptible change in visual range, contrast, or coloration from that which would have existed under natural conditions.

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

33.1-15-19-02. Review of new major stationary sources and major modifications.

1. **Visibility impact analysis.** The owner or operator of a major stationary source or major modification, subject to subsection 1 of section 33.1-15-19-01, shall demonstrate to the department that the actual emissions from the major stationary source or major modification, including fugitive emissions, will not cause or contribute to adverse impact on visibility within any federal class I area. The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to support any analysis or determination made. The owner or operator of a proposed major stationary source or major modification, subject to the requirements of this subsection, shall provide a visibility impact analysis of the visibility impact likely to occur as a result of general commercial, residential, industrial, and other growth associated with the source or major modification.

2. **Visibility models.** All estimates of visibility impact required under this section must be based on those models contained in "Workbook for Estimating Visibility Impairment" (EPA-450/4-80-031, November 1980). Equivalent models may be used subject to prior approval by the department.

3. **Notification of permit application.** The department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from

which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification must include a copy of all information relevant to the permit application and must be given within thirty days of receipt and at least sixty days prior to any public hearing on the application for a permit to construct. Such notification must include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination of anticipated impacts on visibility in any federal class I area, and shall make available to them any materials used in making that determination, promptly after the department makes such determination. The department shall also notify all affected federal land manager's within thirty days of receipt of any advance notification of any such permit application.

4. **Federal land manager review.** The department shall consider any analysis performed by the federal land manager, provided within thirty days of the notification required by subsection 3 of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the department finds that such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result in the federal class I area, the department will, in the notice of opportunity for public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

5. **Permits.** No source subject to this chapter may be issued a permit to construct if the department determines that an adverse impact on visibility in any federal class I area will occur because of the proposed source or major modification.

6. **Public participation.** Where a permit application has been filed for a source subject to the provisions of this chapter, the public must be given an opportunity for review of the permit application and the department's determination as described in subsection 5 of section 33.1-15-15-01.

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

33.1-15-19-03. Visibility monitoring.

The department may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the department deems necessary and appropriate. This can include preconstruction, concurrent with construction, or postconstruction monitoring or any combination thereof.

The department shall provide its proposed requirements for visibility monitoring by the owner or operator to the federal land manager prior to issuing a permit to construct. The department shall consider the federal land manager's comments on the proposed monitoring in any final determinations to be placed on a permit to construct or permit to operate, or both.

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