ARTICLE 33.1-16
CONTROL, PREVENTION, AND ABATEMENT OF POLLUTION OF SURFACE WATER

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CHAPTER 33.1-16-01
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

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33.1-16-01-01. General - Definitions - Permit effect - Incorporation by reference.

1. **Authority.** The authority for this chapter relating to the control, prevention, and abatement of pollution of natural surface and underground waters is provided by North Dakota Century Code section 61-28-04.

2. **Scope and purpose.** This chapter establishes procedures governing the application for, and the issuance, denial, modification, and revocation of, permits for the discharge of pollutants into the waters of the state, as defined by subsection 6 of North Dakota Century Code section 61-28-02. The establishment of such procedures is required as a condition precedent to participation by North Dakota in the national pollutant discharge elimination system, pursuant to the provisions of section 402(b) of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

3. **Definitions.** As used in this chapter, unless the context otherwise indicates:

   a. "Administrator" means the administrator of the United States environmental protection agency.

   b. "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Federal Water Pollution Control Act and which have been:

      (1) Approved or permitted to remain in effect by the administrator following submission to the administrator pursuant to section 303(a) of the Federal Water Pollution Control Act; or

      (2) Promulgated by the administrator pursuant to section 303(b) or (c) of the Federal Water Pollution Control Act.

   c. "Biological monitoring" means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants:

      (1) By techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent; and

      (2) At appropriate frequencies and locations.

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

   e. "Discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

   f. "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant to the waters of the state from any source, including the disposal of pollutants into wells.

   g. "Effluent standard" or "effluent limitation" means any restriction established by the department on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into the waters of the state. Such restrictions shall be at least as stringent as standards adopted by the administrator

pursuant to the provisions of the Federal Water Pollution Control Act. Such restrictions shall include effluent limitations and applicable compliance schedules, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards adopted by the administrator pursuant to the aforesaid Act.

h. "EPA" means the United States environmental protection agency.

i. "Industrial user" means a source of indirect discharge as defined in section 33.1-16-01.1-01.

j. "Major facility" means any facility or activity subject to regulation under the national pollutant discharge elimination system which has been identified as a major facility by the regional administrator in conjunction with the department.

k. "Minor discharge" means any discharge from a facility or activity which has not been identified as a major facility.

l. "Municipality" means a city, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of wastes, as the term is defined by subsection 2 of North Dakota Century Code section 61-28-02, or a designated and approved management agency under section 209 of the Federal Water Pollution Control Act.

m. "National data bank" means a facility or system established or to be established by the administrator for the purposes of assembling, organizing, and analyzing data pertaining to water quality and the discharge of pollutants.

n. "National pollutant discharge elimination system (NPDES)" means the national system for the issuance of permits under section 402 of the Federal Water Pollution Control Act of 1972 and includes any state or interstate program which has been approved by the administrator pursuant to section 402 of the Federal Water Pollution Control Act.

o. "National pollutant discharge elimination system application" or "application" means the uniform national forms, including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the Federal Water Pollution Control Act, for application for a national pollutant discharge elimination system permit and any state form that has been approved for use by the administrator.

p. "National pollutant discharge elimination system form" means any issued national pollutant discharge elimination system permit and any uniform national form developed for use in the national pollutant discharge elimination system and prescribed in regulations promulgated by the administrator and any state form that has been approved for use by the administrator.

q. "National pollutant discharge elimination system permit" means any permit issued by the department pursuant to its authority under North Dakota Century Code section 61-28-04, and subsequent to approval by the administrator as described in subsection 5 of section 33.1-16-01-04.

r. "National pollutant discharge elimination system reporting form" means the uniform national forms, including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the Federal Water Pollution Control Act, for reporting data and information pursuant to monitoring and other conditions of national pollutant discharge elimination system permits and any state form that has been approved for use by the administrator.

s. "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, any agency or instrumentality of the United States government, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

t. "Pollutant" means "wastes" as defined in subsection 2 of North Dakota Century Code section 61-28-02, including dredged spoil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

u. "Refuse Act application" means the application for a permit under section 13 of the River and Harbor Act of 1899 [33 U.S.C. 407].

v. "Regional administrator" means the regional administrator of region VIII of the environmental protection agency, which includes within its jurisdiction North Dakota.

w. "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

x. "Toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions including malfunctions in reproduction, or physical deformations, in such organisms or their offspring.

y. "Waters of the state" means all water included within the definitions given in subsection 15 of North Dakota Century Code section 61-28-02 or North Dakota Century Code section 61-01-01.

4. **Effect of a permit.**

a. Except for any toxic effluent standards and prohibitions and standards for sewage sludge use or disposal, compliance with a permit constitutes compliance with sections 301, 302, 307, 318, 403, and 405(a) and (b) of the Clean Water Act.

b. The issuance of a permit does not convey any property rights of any sort or any exclusive privilege.

5. **Incorporation by reference.**

a. The subchapters, parts, subparts, and appendices of title 40 Code of Federal Regulations which are incorporated by reference into this chapter shall be treated as if they were published in full in this chapter. Except as provided in section 33.1-16-01-31 or otherwise specified, any incorporation by reference shall be as it exists on January 1, 2018.

b. Any reference to "waters of the United States" or "waters of the U.S." in any corporation by reference shall include "waters of the state" as defined in this section.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-01.1. Additional point sources subject to regulation.

1. Concentrated animal feeding operations, 40 CFR 122.23, is incorporated into this chapter by reference. The department regulates livestock operations under chapter 33.1-16-03, including those which are not subject to this subsection.

2. Concentrated aquatic animal production facilities, 40 CFR 122.24, is incorporated into this chapter by reference.

3. Aquaculture projects, 40 CFR 122.25, is incorporated into this chapter by reference.

4. Storm water discharges, 40 CFR 122.26, is incorporated into this chapter by reference.

5. Silvicultural activities, 40 CFR 122.27, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-02. Acquisition of data.

1. Application for a national pollutant discharge elimination system permit. Any person who discharges any waste through a point source into a surface water or conducts any activity which requires a valid permit under North Dakota Century Code section 61-28-06 must file a completed national pollutant discharge elimination system application.

2. Any person who commences discharge of any waste through a point source into a surface water or conduct of any activity which requires a valid permit under North Dakota Century Code section 61-28-06 after the effective date of this chapter shall either:

    a. File a completed national pollutant discharge elimination system application no less than one hundred eighty days prior to the day on which it is desired to commence operation of the waste disposal operation; or

    b. File a completed national pollutant discharge elimination system application in sufficient time prior to the commencement of waste disposal operations to allow the department to ensure compliance with any applicable water quality standards and effluent standards and the requirements of sections 306 and 208(b) and (c) of the Federal Water Pollution Control Act.

3. Application requirements.

    a. All applications must comply with 40 CFR part 122.21(f), which is incorporated into this chapter by reference.

    b. Applications by manufacturing, commercial mining, and silvicultural dischargers shall comply with 40 CFR part 122.21(g), which is incorporated into this chapter by reference.

    c. Applications by manufacturing, commercial mining, and silvicultural facilities that discharge only nonprocess wastewater shall comply with 40 CFR part 122.21(h), which is incorporated into this chapter by reference.

    d. Applications by concentrated animal feeding operations and aquatic animal production facilities shall comply with 40 CFR part 122.21(i) which is incorporated into this chapter by reference.

    e. Applications from publicly owned treatment works shall comply with 40 CFR part 122.21(j), which is incorporated into this chapter by reference.

f. Applications from new sources shall comply with 40 CFR part 122.21(k), which is incorporated into this chapter by reference.

4. The department may require whatever additional information is necessary to complete the processing of the application. No application will be processed by the department until all of the requested information is supplied and the application is complete.

5. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

6. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted with an application for a period of at least three years from the date the application is signed.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-02.1. Requests for variance.

1. Applicants for a national pollutant discharge elimination system permit may request a variance from otherwise applicable effluent limitations under the following provisions:

   a. Variance requests by nonpublicly owned treatment works, 40 CFR 122.21(m), which is incorporated into this chapter by reference;

   b. Variance requests by publicly owned treatment works, 40 CFR 122.21(n), which is incorporated into this chapter by reference; and

   c. Expedited variance procedures and time extensions, 40 CFR 122.21(o), which is incorporated into this chapter by reference.

2. The public notice for a draft permit for which a variance has been requested under section 316(a) of the Federal Water Pollution Control Act shall comply with the provisions of 40 CFR 124.57(a), which is incorporated into this chapter by reference.

3. Decision on variances, 40 CFR 124.62, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-03. Receipt and use of federal data.

1. The department shall receive national pollutant discharge elimination system applications and other relevant data collected by the regional administrator prior to North Dakota's participation in the national pollutant discharge elimination system. The procedure for such transmittal of data shall be set out in a formal agreement entered into by the department and the regional administrator.

2. No national pollutant discharge elimination system permits shall be issued by the department based upon any Refuse Act or national pollutant discharge elimination system application which the regional administrator has identified as incomplete or otherwise deficient until the department receives information sufficient to correct the deficiency to the satisfaction of the regional administrator.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 61-28-04

33.1-16-01-04. Transmission of data to the regional administrator.

The department shall enter into a formal agreement with the regional administrator, setting out procedures for the following actions:

1. Transmittal to the regional administrator of a complete copy of any national pollutant discharge elimination system form received by the department.

2. Transmittal to the national data bank of a complete copy of any appropriate national pollutant discharge elimination system form received by the department.

3. Procedures for acting on the regional administrator's written waiver, if any, of the regional administrator's rights to receive copies of national pollutant discharge elimination system forms with respect to classes, types, and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters as such are defined by section 502(7) of the Federal Water Pollution Control Act, or parts thereof.

4. An opportunity for the regional administrator to object in writing to deficiencies in any national pollutant discharge elimination system application or reporting form received by the regional administrator and to have such deficiency corrected. If the regional administrator's objection relates to a national pollutant discharge elimination system application, the department shall send the regional administrator any information necessary to correct the deficiency and, if the regional administrator so requests, shall not issue the national pollutant discharge elimination system permit until the department receives notice from the regional administrator that the deficiency has been corrected.

5. An opportunity for the regional administrator to identify any discharge which has a total volume of less than fifty thousand gallons [189,250 liters] on every day of the year as a discharge which is not a minor discharge. If the regional administrator so identifies a discharge and notifies the department, the latter shall require the applicant for such discharge to submit additional national pollutant discharge elimination system application forms or any other information requested by the regional administrator in the regional administrator's notification to the department.

6. Procedures for the transmittal. if requested by the regional administrator, of copies of notice received by the department from publicly owned treatment works pursuant to subsection 4 of section 33.1-16-01-16.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-05. Identity of signatories to national pollutant discharge elimination system forms.

1. Any national pollutant discharge elimination system application form or other document required to accompany the form when submitted to the department must be signed as follows:

   a. In the case of corporations, by a principal executive officer of at least the level of vice president, or the officer's duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the national pollutant discharge elimination system form originates.

   b. In the case of a partnership, by a general partner.

c. In the case of sole proprietorship, by the proprietor.

d. In the case of a municipal, state, federal, or other public facility, by either a principal executive officer or a ranking elected official.

2. All reports required by permits and other information requested by the department shall be signed by the person described in subsection 1 or that person's duly authorized representative. Authorization for a representative shall be submitted to the department in writing by the person described in subsection 1 and shall specify either an individual or a position having responsibility for the overall operation of the regulated facility.

3. If an authorization becomes invalid, a new authorization shall be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Any person signing application forms, reports, or other information, shall make the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-06. Notice and public participation.

In the formulation of tentative determinations and draft national pollutant discharge elimination system permits, including general permits:

1. The department will prepare a tentative staff determination, with respect to any completed national pollutant discharge elimination system application. Such tentative determinations shall include at least the following:

   a. A proposed determination to issue or deny a national pollutant discharge elimination system permit for the discharge described in the application.

   b. If the proposed determination is to issue a national pollutant discharge elimination system permit, the following additional tentative determinations shall be made:

      (1) Proposed effluent limitations, standards, and prohibitions, identified pursuant to section 33.1-16-01-13 for those pollutants proposed to be limited.

      (2) If necessary, a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations.

      (3) Proposed permit conditions pursuant to sections 33.1-16-01-12 and 33.1-16-01-13.

      (4) Proposed monitoring requirements pursuant to section 33.1-16-01-12.

      (5) Proposed variances pursuant to section 33.1-16-01-02.1.

(6) A brief description of any other proposed special condition which will have a significant impact upon the discharge described in the national pollutant discharge elimination system application.

2. The department shall organize the tentative determinations prepared pursuant to subsection 1 into a draft national pollutant discharge elimination system permit for the discharge which is the subject of the application.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-07. Public notice.

1. Public notice of every national pollutant discharge elimination system draft permit shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a national pollutant discharge elimination system permit for the proposed discharge. Procedures for the circulation of public notice shall include at least the following:

   a. Notice of a major facility permit or general permit shall be published in a daily or weekly newspaper within the area affected by the facility or activity.

   b. Notice of all other permits shall be circulated within the geographical areas of the proposed discharge; such circulation may include any or all of the following:

      (1) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located.

      (2) Posting near the entrance to the applicant's premises and in nearby places.

      (3) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.

      (4) Any other method, including press releases, which will reasonably provide actual notice of the proposed action to the persons potentially affected.

   c. Notice shall be mailed to the following persons:

      (1) Any user identified in the permit application of a privately owned treatment works.

      (2) Persons who are on the mailing list.

      (3) Local governmental units which have jurisdiction over the area where the facility is proposed to be located and each state agency which has authority with respect to the facility's construction or operation.

   d. Notice, a copy of the permit application, the statement of basis or fact sheet if required by section 33.1-16-01-08, and the draft permit prepared pursuant to section 33.1-16-01-06 shall be mailed to the following persons:

      (1) The applicant, except for those national pollutant discharge elimination system general permits for which there is no applicant.

      (2) Any other agency which is known to have issued or to be required to issue an environmental control permit for the same facility or activity.

(3) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the advisory council on historic preservation, and the state historic preservation officers, including any affected states or Indian tribes.

(4) Any state agency responsible for plan development under sections 208(b)(2), 208(b)(4), and 303(e) of the Clean Water Act, the United States army corps of engineers, the United States fish and wildlife service, and the national marine fisheries service.

e. The department shall add the name of any person or group upon request to the mailing list. The department shall also post on its webiste annually an invitation to be added to the mailing list.

2. The department shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the national pollutant discharge elimination system application. All written comments submitted during the thirty-day comment period shall be retained by the department and considered in the formulation of its final determinations with respect to the national pollutant discharge elimination system application. The period for comment may be extended at the discretion of the department.

3. The contents of public notice of applications for a national pollutant discharge elimination system permit shall include at least the following:

a. Name, address, and telephone number of the agency issuing the public notice.

b. Name and address of each applicant and facility, except for public notices of general permits.

c. Brief description of each applicant's activities or operations which result in the discharge described in the national pollutant discharge elimination system application or draft general permit, e.g., municipal waste treatment plant, steel manufacturing, or drainage for mining activities.

d. Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge. For general permits, the public notice shall include a description of the permit area.

e. A statement of the tentative determination to issue or deny a national pollutant discharge elimination system permit for the discharge described in the national pollutant discharge elimination system application.

f. A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by subsection 2, the right to request a public hearing, and any other means by which interested persons may influence or comment upon those determinations.

g. Address and telephone number of the department, where interested persons may obtain further information or request a copy of the draft permit prepared pursuant to section 33.1-16-01-06, request a copy of the fact sheet prepared pursuant to section 33.1-16-01-08, and inspect and copy national pollutant discharge elimination system forms and related documents.

h. The date, time, and location of any public hearing or meeting which has been scheduled.

History: Effective January 1, 2019.

General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-07.1. Response to comments.

Upon issuance of any final permit, the department shall issue a response to comments which briefly describes and responds to all significant comments received during the public comment period, public hearing, or public meeting. The response shall specify each provision of the draft permit which has been changed and the reasons for each change and shall be available to the public.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-08. Fact sheets.

1. The department shall prepare, and following public notice, shall send, upon request to any person, a fact sheet with respect to the application described in the public notice, when a draft permit is prepared in the following circumstances:

    a. The draft permit is for a major facility or a general permit;

    b. The draft permit incorporates a variance or requires an explanation pursuant to paragraph 3 of subdivision c of subsection 2; or

    c. The draft permit is subject to widespread public interest or raises major issues.

2. The contents of such fact sheets shall include at least the following information:

    a. A brief description of the facility or activity and, when appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the national pollutant discharge elimination system application.

    b. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being discharged.

    c. The tentative determinations required under section 33.1-16-01-06, in addition to the following:

        (1) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions.

        (2) Any calculation or explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard, and reasons why they are applicable or an explanation of how the alternative effluent limitations were developed.

        (3) When the draft permit contains limitations to control toxic pollutants, limitations on internal waste steams, limitations on indicator pollutants, or case-by-case limitations derived from technology-based treatment requirements, an explanation of the limitations' applicability.

    d. A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge.

    e. Reasons why any requested variances or alternatives to required standards do or do not appear justified.

f. When applicable, an explanation of the proposed method of regulating users of privately owned treatment works.

g. A more detailed description of the procedures for the formulation of final determinations than that given in the public notice, including:

(1) The thirty-day comment period required by section 33.1-16-01-07 and the address where the comments will be received.

(2) Any procedures by which the public may participate in the formulation of the final determinations, including procedures for requesting a hearing pursuant to section 33.1-16-01-11.

h. The name and telephone number of a person to contact for additional information.

3. The department shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-09. Notice to government agencies.

The state shall notify other appropriate government agencies of each complete application for a national pollutant discharge elimination system permit and shall provide such agencies an opportunity to submit their written views and recommendations.

1. The department shall ensure that a copy of each fact sheet prepared under the provisions of this chapter is mailed to the following parties:

a. Any other state whose waters might be affected by the issuance of a national pollutant discharge elimination system permit.

b. Any interstate agency having water quality authority over affected waters.

c. Any other appropriate federal, state, or local agency, including other appropriate public health agencies.

d. The appropriate district engineer of the United States army corps of engineers.

2. Each such governmental body listed in subsection 1 shall be given an opportunity to submit written recommendations concerning the proposed permit to the department.

a. Whenever a state makes recommendations concerning the proposed permit, and such recommendations are not incorporated into the final version of the permit, the department shall provide the recommending state with a written explanation for the failure to incorporate such recommendations.

b. Response to written comments provided by the corps of engineers during the comment period pursuant to section 33.1-16-01-06 shall conform to the following:

(1) If the corps of engineers advises that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant notified.

(2) If the corps of engineers advises that imposing specified conditions in the permit is necessary to avoid any substantial impairment of anchorage or navigation, the department shall include the specified conditions in the permit.

(3) Review or appeal of a permit denial or of conditions specified by the corps of engineers shall be made through the applicable procedures of the corps of engineers. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the corps of engineers, those conditions shall be considered stayed in the national pollutant discharge elimination system permit for the duration of that stay.

c. Whenever the United States fish and wildlife service, the national marine fisheries service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health makes recommendations of specified permit conditions necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the department may include the specified conditions in the permit to the extent necessary to carry out the provisions of 40 CFR part 122.49, and of the Clean Water Act.

3. In appropriate cases, the department may consult with the United States corps of engineers or the United States fish and wildlife service before issuing a draft permit. The department may reflect these agencies' views in the statement of basis, the fact sheet, or the draft permit.

4. The department may enter into a written agreement with the appropriate district engineer of the United States army corps of engineers to provide for procedures which will ensure the transmission of all forms and information required by the corps, and procedures for the recording of any comment or objections the corps may have on a proposed permit. A copy of the agreement, if promulgated, shall be forwarded to the regional administrator.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-10. Public access to information.

In addition to the provisions of section 33.1-16-01-07, the department shall provide the following:

1. Facilities for the public inspection of all information relating to national pollutant discharge elimination system forms, including monitoring data, and a machine or device for the copying of those papers and documents at a reasonable fee.

2. A copy of any request for the confidential treatment of any information relating to a North Dakota pollutant discharge elimination system permit application to the regional administrator, together with all information related to such request.

3. If the department determines that certain information should be accorded confidential status for reason of being a trade secret, it shall disclose such information to the administrator upon the latter's request; the administrator shall maintain the disclosed information in confidence, unless the administrator determines that such information, if made public, would not divulge methods of processes entitled to protection as trade secrets.

4. Information required by national pollutant discharge elimination system application forms may not be claimed confidential. This includes information submitted on the forms and any attachments used to supply information required by the form. In no case shall the name and address of any applicant or permittee, permit applications, permits, or effluent data be considered confidential by the department.

History: Effective January 1, 2019.

General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-11. Hearings and notice.

1. A national pollutant discharge elimination system applicant, any affected state, any affected interstate agency, any affected country, the regional administrator, or any interested agency, person, or group of persons may request or petition the department for a public hearing with respect to national pollutant discharge elimination system applications. Any such request or petition for public hearing shall be filed in writing within the thirty-day period prescribed in subsection 2 of section 33.1-16-01-07 and shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

2. The department shall hold a hearing if it determines that there is a significant public interest, including the filing of requests or petitions for such hearing, in holding such a hearing. The department may also hold a hearing at its discretion for any other reason. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the department and may, as appropriate, consider related groups of permit applications.

3. Public notice of any hearing held under this section shall be circulated at least as widely as was the notice of the national pollutant discharge elimination system application pursuant to section 33.1-16-01-07. Procedures for the circulation of public notice for hearings held under this section shall include at least the following:

   a. Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge.

   b. Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet for the national pollutant discharge elimination system application.

   c. Notice shall be mailed to any person or group upon request.

   d. Notice shall also be given to all persons who submitted comments on the proposed national pollutant discharge elimination system permit pursuant to section 33.1-16-01-07.

   e. Notice shall be effected pursuant to subdivision a at least thirty days in advance of the hearing.

4. The contents of public notice of any hearing held pursuant to this section shall include at least the following:

   a. Name, address, and telephone number of the agency holding the public hearing.

   b. Name and address of each applicant whose application will be considered at the hearing, except in the case of draft general permits.

   c. A brief description of the business conducted at the facility of the activity described in the permit application or draft permit.

   d. Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway.

   e. A reference to the date of previous public notices relating to the permit.

   f. Information regarding the date, time, and location for the hearing.

g. The purpose of the hearing.

h. A concise statement of the issues raised by the persons requesting the hearing.

i. Address and telephone number of the premises at which interested persons may obtain further information, request a copy of each draft national pollutant discharge elimination system permit prepared pursuant to section 33.1-16-01-06, request a copy of each fact sheet prepared pursuant to section 33.1-16-01-08, and inspect and copy national pollutant discharge elimination system forms and related documents.

j. A brief description of the nature of the hearing, including the rules and procedures to be followed.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-12. Terms and conditions of national pollutant discharge elimination system permits.

1. The following discharges into the waters of the state are prohibited:

   a. Any radiological, chemical, or biological warfare agent or high-level radioactive waste.

   b. Any discharge into the navigable waters that the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation.

   c. Any discharge to which the regional administrator has objected in writing.

   d. Any discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Federal Water Pollution Control Act.

   e. Any discharge requiring certification under section 401 of the Federal Water Pollution Control Act and 40 CFR part 124.53, for which the department has neither granted nor waived the certification.

   f. Any discharge from a new source or new discharger which causes or contributes to the violation of applicable water quality standards, unless the owner or operator of the new source or new discharger demonstrates that:

      (1) The existing dischargers to the stream segment are subject to compliance schedules designed to bring the stream segment into compliance; and

      (2) Remaining pollutant load allocations are sufficient to allow for the discharge.

2. All national pollutant discharge elimination system permits shall contain, either expressly or by reference, the permit conditions listed in 40 CFR 122.41, which is incorporated into this chapter by reference.

3. National pollutant discharge elimination system permits shall contain all applicable permit conditions listed in 40 CFR 122.42, which is incorporated into this chapter by reference.

4. National pollutant discharge elimination system permit conditions shall be established in compliance with 40 CFR 122.43, which is incorporated into this chapter by reference.

5. National pollutant discharge elimination system permits shall include requirements for recording and reporting of monitoring results in compliance with 40 CFR 122.48, which is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-13. Application of effluent standards and limitations, water quality standards, and other requirements.

All of the terms and conditions of any permit issued by the department will comply with the following requirements whenever applicable:

1. Effluent limitations as incorporated by reference in sections 33.1-16-01-30 and 33.1-16-01-31.

2. Standards of performance for new sources as incorporated by reference in section 33.1-16-01-31.

3. Effluent standards or prohibitions for toxic pollutants as incorporated by reference in section 33.1-16-01-29.

4. Pretreatment standards for the introduction of pollutants into treatment works as incorporated by reference in section 33.1-16-01-31.

5. Water quality standards, classifications, or effluent requirements established pursuant to North Dakota Century Code sections 61-28-04 and 61-28-05 if such standards and requirements are more stringent than those described in subsections 1 through 4.

6. Water quality standards and total maximum daily loads established pursuant to the authority and guidelines specified in the Federal Water Pollution Control Act and properly transmitted to the department.

7. Prior to the adoption of effluent limitations and standards by the administrator under the Federal Water Pollution Control Act, any such additional conditions as the department determines are necessary to carry out the provisions of that Act.

8. Any applicable regulations promulgated by the secretary of the department in which the coast guard is operating regulating the discharge of pollutants from vessels.

9. Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the Federal Water Pollution Control Act.

10. When an issued national pollutant discharge elimination system permit applies the effluent standards and limitations described in subsections 1 through 4, the department must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some explicit verification of that statement.

11. When an issued national pollutant discharge elimination system permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

12. National pollutant discharge elimination system permits shall include limitations, standards, and other permit conditions in compliance with the requirements of 40 CFR 122.44, which is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-14. Effluent limitations in issued national pollutant discharge elimination system permits.

1. Any permit issued by the department shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight or some other appropriate measure such as pH, temperature, or radiation. When it is at all appropriate the requirement is that the discharge must be expressed in terms of weight. The department may also impose additional quantitative limitations in terms of average or maximum concentration levels.

2. When applicable, permit conditions in national pollutant discharge elimination system permits shall be calculated in compliance with the requirements of 40 CFR 122.45, which is incorporated into this chapter by reference.

3. The effluent quality for municipal wastes shall be that required by the department and shall be based on the following:

   a. Municipal wastes shall receive a minimum of secondary treatment or equivalent in compliance with 40 CFR 133, which is incorporated by reference in section 33.1-16-01-30.

   b. Wastes shall be effectively disinfected before discharge into state waters if such discharges cause violation of the bacteria criteria as set forth in the standards of water quality for the state of North Dakota, chapter 33.1-16-02.1. The effluent shall meet the water quality criteria for bacteria except as provided in subdivision c.

   c. The effluent limitations specified under secondary treatment and bacteria criteria may be adjusted to reflect site-specific considerations as provided in the following:

      (1) A five-day biochemical oxygen limit of twenty-five milligrams per liter (consecutive thirty-day average) may be applied in instances in which limits expressed in terms of secondary treatment standards would be impractical or deemed inappropriate to protect receiving waters.

      (2) In certain instances, external circumstances or specific uses of the receiving waters make either attainment or application of the suspended solids or bacteria limitations an ineffective means of controlling water quality. For this reason, the department reserves the right to evaluate the application of these limitations on a case-by-case basis.

      (3) The pH of natural ground waters and surface waters in some parts of the state (presently used for water supplies with or without treatment) are basic, and the stabilization process of wastewater treatment in lagoon systems can result in more alkaline (increased pH) water. Discharges from waste treatment facilities may exceed the upper pH limit of 9.0 provided in the secondary treatment standard due to these uncontrollable properties. Approval to discharge may be granted, providing the pH of the receiving water is not violated.

   d. The department may require treatment in addition to that listed in this section if such waste discharges, made during low streamflows, cause violations of stream water quality standards or have a detrimental effect on the beneficial uses of the receiving waters.

4. Industrial waste effluents shall meet all parameters of quality as set forth in section 33.1-16-01-13 and shall not violate North Dakota water quality standards.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 61-28-04

33.1-16-01-15. Schedules of compliance in issued national pollutant discharge elimination system permits.

1. With respect to any discharge which is not in compliance with applicable effluent standards and limitations, water quality standards, or other requirements listed in section 33.1-16-01-13, the permittee shall be required to take specific steps to achieve compliance with such applicable effluent standards and limitations, water quality standards, or other requirements:

   a. In accordance with any applicable schedule of compliance contained in:

      (1) Applicable effluent standards and limitations;

      (2) If more stringent, water quality standards; or

      (3) If more stringent, requirements listed in section 33.1-16-01-13; or

   b. In the absence of any applicable schedule of compliance, within a reasonable period of time, as provided in subsection 13 of North Dakota Century Code section 61-28-04; provided, that such period shall be consistent with the guidelines and requirements of the Federal Water Pollution Control Act.

2. A permit issued to a new source, new discharger, or recommencing discharger may contain a compliance schedule, but only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before commencement or recommencement of the discharge. For a new source or new discharger, such requirements must also have been issued or revised prior to commencement of construction.

3. When the period of time for compliance specified in subsection 1 exceeds nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than nine months elapse between interim dates. If the time necessary for the completion of the interim requirements, such as the construction of a treatment facility, is more than nine months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each national pollutant discharge elimination system permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.

4. Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

5. On the last day of the months of February, May, August, and November, the department shall transmit to the regional administrator a list of all instances, as of thirty days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement of this section. Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

   a. Name and address of each noncomplying permittee.

   b. A short description of each instance of noncompliance.

c. A short description of any actions or proposed actions by the permittee or department to comply or enforce compliance with the interim or final requirement.

d. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

6. If a permittee fails or refuses to comply with an interim or final requirement in a national pollutant discharge elimination system permit, such noncompliance shall constitute a violation of the permit for which the department may modify, suspend, or revoke the permit or take direct enforcement action.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-16. Other terms and conditions of issued national pollutant discharge elimination system permits.

1. All discharges authorized by the national pollutant discharge elimination system permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharge of pollutants must be reported by submission of a new national pollutant discharge elimination system application or, if such discharge does not violate effluent limitations specified in the national pollutant discharge elimination system permit, by submission to the department of notice of such new or increased discharges of pollutants; that the discharges of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit.

2. A permit may be transferred by the permittee to a new owner or operator in either of the following ways:

   a. The current permittee may request that the department modify or revoke and reissue the permit to identify the new permittee, and incorporate any other requirements as may be necessary under the Federal Water Pollution Control Act; or

   b. The current permittee may notify the department in writing at least thirty days in advance of the proposed transfer date. The notice shall include a written agreement between the current and new permittees containing a specific date of transfer of permit responsibility, coverage, and liability between them. Unless the department notifies the current permittee that the permit will be transferred by modification or revocation and reissuance, the transfer will be effective on the date specified in the agreement.

3. A permit may be modified, suspended, or revoked in whole or in part during its term, or denied renewal, for cause, including the following:

   a. Violation of any terms or conditions of the permit.

   b. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.

   c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

   d. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, suspension, or revocation.

e. If the department receives notice of a proposed permit transfer, the permit may be modified or revoked and reissued, but may not be suspended or denied renewal unless other cause exists.

4. The permittee shall permit an authorized representative of the department upon presentation of the representative's credentials:

   a. To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit.

   b. To have access to and copy any records required to be kept under terms and conditions of the permit.

   c. To inspect any monitoring equipment or method required in the permit.

   d. To sample any discharge of pollutants.

5. Publicly owned treatment works shall provide notice to the department in the following situations:

   a. Any new introduction of pollutants into such treatment works from a new source, if such source would be subject to the provisions of section 306 of the Federal Water Pollution Control Act and if such source was discharging such pollutants.

   b. Except as to such categories and classes of point sources or discharges specified by the department, any new introduction of pollutants into such treatment works from a source which would be subject to the Act if such source were discharging pollutants.

   c. Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

      Such notice shall include information on:

      (1) The quality and quantity of effluent to be introduced into such treatment works; and

      (2) Any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

   d. If the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of sections 204(b), 307, and 308 of the Federal Water Pollution Control Act. As a means of ensuring such compliance, the permittee shall require of each industrial user subject to the requirements of section 307 of that Act and shall forward a copy to the department periodic notice over intervals not to exceed nine months of progress toward full compliance with section 307 requirements.

   e. The permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

   f. If a toxic effluent standard or prohibition is established pursuant to section 307 of the Federal Water Pollution Control Act for a toxic pollutant which is present in the permittee's discharge, and if such standard or prohibition is more stringent than any limitation upon such pollutant in the national pollutant discharge elimination system permit, the department shall revise or modify the permit in accordance with such toxic effluent standard or prohibition and so notify the permittee.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-17. Transmission to regional administrator of proposed national pollutant discharge elimination system permits.

The department shall ensure that the regional administrator is provided with copies of all national pollutant discharge elimination system permits that are proposed to be issued by the department. Such procedures shall provide for at least the following:

1. Except as waived pursuant to subsection 4, the transmission by the department of any and all terms, conditions, requirements, or documents which are a part of the proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants.

2. A period of time (up to ninety days) in which the regional administrator, pursuant to any right to object provided in section 402(d)(2) of the Federal Water Pollution Control Act, may comment upon, object to, or make recommendations with respect to the proposed permit.

3. Procedures for the department's acceptance or rejection of a written objection by the regional administrator.

4. Any written waiver by the regional administrator of the regional administrator's rights to receive, review, object to, or comment upon proposed national pollutant discharge elimination system permits for classes, types, or sizes within any category of point sources.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-18. Transmission to regional administrator of issued national pollutant discharge elimination system permits.

A copy of every national pollutant discharge elimination system permit issued by the department will be sent to the regional administrator immediately following issuance along with any and all terms, conditions, requirements, or documents which are a part of such permit or which affect the authorization by the permit of the discharge of pollutants.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-19. Duration and review of national pollutant discharge elimination system permits.

Duration of permits, 40 CFR part 122.46, is incorporated into this chapter by reference.

1. Every permit issued by the department shall have a fixed term not to exceed five years. When the permittee has complied with section 33.1-16-01-20, but the department, through no fault of the permittee, fails to issue a new permit prior to the expiration of the previous permit, the department may extend the expired permit until the permit is reissued. Permits extended under this section remain fully effective and enforceable.

2. The department may issue any permit for a duration that is less than five years.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 61-28-04

33.1-16-01-20. Reissuance of national pollutant discharge elimination system permits.

1. Any permittee who wishes to continue to discharge after the expiration date of the permittee's permit must file for reissuance of the permittee's permit at least one hundred eighty days prior to its expiration.

2. The request for reissuance of a permit shall be in letter form and contain, as a minimum, the following:

   a. The permit number and date of issue.

   b. Any past, present, or future changes in the effluent quantity or quality not reflected in the present permit conditions.

3. The department will review each permit to ensure that the following conditions exist:

   a. The permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the expired national pollutant discharge elimination system permit.

   b. The department has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records submitted to the department by the permittee.

   c. The discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in section 33.1-16-01-13, including any additions to, or revisions or modifications of, such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

   d. The notice and public participation procedures set out in section 33.1-16-01-06 shall be followed for every reissuance under this chapter.

   e. Notwithstanding any other provision in this chapter, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the federal Internal Revenue Code of 1954, whichever period ends first.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-21. Monitoring, recording, and reporting.

1. Any discharge authorized by a national pollutant discharge elimination system permit may be subject to such monitoring requirements as may be reasonably required by the department pursuant to its authority under subsection 10 of North Dakota Century Code section 61-28-04.

2. Any discharge authorized by a national pollutant discharge elimination system permit which (a) is not a minor discharge, and (b) the regional administrator requests, in writing, be monitored, or (c) contains toxic pollutants for which an effluent standard has been established

by the administrator pursuant to section 307(a) of the Act shall be monitored by the permittee for at least the following:

a. Flow (in gallons per day).

b. All of the following pollutants:

(1) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit.

(2) Pollutants which the director finds, on the basis of information available to the director, could have a significant impact on the quality of navigable waters.

(3) Pollutants specified by the administrator, in regulations issued pursuant to the Federal Water Pollution Control Act as subject to monitoring.

(4) Any pollutants in addition to the above which the regional administrator requests, in writing, be monitored.

3. Each effluent flow or pollutant required to be monitored pursuant to subsection 2 shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-22. Recording of monitoring activities and results.

1. The results of any monitoring activity required pursuant to section 33.1-16-01-21 and subsection 10 of North Dakota Century Code section 61-28-04 shall be recorded and maintained for a period of not less than three years. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the department or the regional administrator.

2. Any records of monitoring activities and results shall include for all samples:

a. The date, exact place, and time of sampling.

b. The date analyses were performed.

c. Who performed the analyses.

d. The analytical techniques or methods utilized.

e. The results of such analysis.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-23. Reporting of monitoring results.

Monitoring results obtained by a permittee shall be reported to the department in accordance with a reporting schedule prescribed by the department in the national pollutant discharge elimination system

permit. In no case shall the required frequency of reporting be less than on an annual basis. Reports shall be submitted on the proper national pollutant discharge elimination system reporting form which will be supplied to the permittee by the department.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-24. Enforcement.

The department shall evaluate all reports, notifications, and data submitted by a permittee in compliance with this chapter and shall investigate and follow up all apparent violations for possible enforcement action pursuant to North Dakota Century Code section 61-28-08. All such information received by the department, if forwarded to the regional administrator pursuant to the requirements of this chapter, shall constitute information available to the administrator for purposes of section 309 of the Federal Water Pollution Control Act.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-25. Modification, suspension, and revocation of national pollutant discharge elimination system permits.

1. The department may modify, suspend, or revoke any national pollutant discharge elimination system permit in whole or in part during its term for cause including the causes listed in subsection 2 of section 33.1-16-01-16, or for failure or refusal of the permittee to carry out the requirements of subsection 3 of section 33.1-16-01-16.

2. Causes for modification, 40 CFR 122.62(a), is incorporated into this chapter by reference.

3. Any such modification, suspension, or revocation by the department shall be governed by the procedures outlined in North Dakota Century Code section 61-28-07, and the following procedures:

    a. Permit actions may be undertaken at the request of any interested person or upon the department's initiative. Permits may be modified, suspended, or revoked and reissued only for the reasons specified in subsections 1, 2, and 4.

    b. If the department tentatively decides to modify or revoke and reissue a permit, a draft permit incorporating the proposed changes shall be prepared pursuant to section 33.1-16-01-06. The department may request additional information from the permittee. If the permit is to be modified, the department may require the submission of an updated application. If the permit is to be revoked and reissued, the permittee shall submit a new application.

    c. In a permit modification, only those conditions to be modified shall be reopened when the draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened, but the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

    d. If the department tentatively decides to suspend a permit under subsection 3 of section 33.1-16-01-16, a notice of intent to terminate, a type of draft permit, shall be issued. The notice of intent to terminate shall be prepared pursuant to section 33.1-16-01-06.

4. Minor modifications of permits, 40 CFR 122.63, is incorporated into this chapter by reference. Such modifications are not subject to subsection 3.

5. The department may, upon request of the permittee, revise or modify a schedule of compliance in an issued national pollutant discharge elimination system permit if it determines good and valid cause, such as an act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control, exists for such revision and if within thirty days following receipt of notice from the department, the regional administrator does not object in writing. All revisions or modifications made pursuant to this section during the period ending thirty days prior to the date of transmission of such list shall be included in the list prepared by the director pursuant to subsection 4 of section 33.1-16-01-15.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-26. Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

1. Disposal of pollutants into wells that affect the waters of the state is prohibited, except as provided under an underground injection control authorization pursuant to chapter 33.1-25-01, or as provided in applicable regulations of the state industrial commission. Any permit issued for the disposal of pollutants into wells shall be issued in accordance with the procedures and requirements specified in the applicable regulations.

2. When part of a discharger's process wastewater is not subject to a national pollutant discharge elimination system permit because it is being disposed into a well, into a publicly owned treatment works, or by land application, applicable effluent standards and limitations shall be adjusted to reflect the reduced waste load. Permit effluent standards and limitations shall be calculated by one of the following methods:

   a. If none of the waste from a particular process is discharged into waters of the state, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations from that process shall be eliminated from the permit limit calculations.

   b. In all other cases, effluent limitations shall be adjusted proportionally to the amount of wastewater to be diverted from discharge into waters of the state. Effluent limitations and standards may be further adjusted under subsection 4 of section 33.1-13-01-32 if the character or treatability of the pollutants is changed by the alternative disposal method.

   c. Subdivisions a and b do not apply to the extent that promulgated effluent limitations guidelines control concentrations of pollutants but not mass or specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into publicly owned treatment works.

3. This section shall not alter a discharger's obligation to comply with any more stringent applicable requirements in this chapter.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-26.1. General permits.

1. **Coverage.** The department may issue a general permit in accordance with the following:

a. Area. The general permit will be written to cover a category of discharges described in the permit under subdivision b, except those covered by individual permits, within a designated area. The area will correspond to existing geographic or political boundaries or any other appropriate division or combination of boundaries.

b. Sources. The general permit may be written to regulate, within the designated area as described in subdivision a, categories of point sources if the sources all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the department, are more appropriately controlled under a general permit than under individual permits.

c. Storm water. The general permit may be written to regulate storm water point sources within the designated area as described in subdivision a.

2. **Administration.**

a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of chapter 33.1-16-01.

b. Requiring an individual permit.

(1) The department may require any person authorized by a general permit to apply for and obtain an individual North Dakota pollutant discharge elimination system permit. Any interested person may petition the director to take action under this paragraph. Cases when an individual North Dakota pollutant discharge elimination system permit may be required include the following:

(a) The discharge is a significant contributor of pollution as determined by the factors set forth in chapter 33.1-16-01;

(b) The discharger is not in compliance with the conditions of the general North Dakota pollutant discharge elimination system permit;

(c) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(d) Effluent limitation guidelines are promulgated for point sources covered by the general North Dakota pollutant discharge elimination system permit;

(e) A North Dakota water quality management plan containing requirements applicable to such point sources is approved;

(f) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; or

(g) The requirements of subsection 1 are not met.

(2) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under section 33.1-16-01-02 to the department with reasons supporting the request. The request must be submitted no later than ninety days after the notice by the department in accordance with section 33.1-16-01-07. The request must be processed under chapter 33.1-16-01. If the reasons cited by the owner or operator are adequate to support the request, the department may issue an individual permit.

(3) When an individual North Dakota pollutant discharge elimination system permit is issued to an owner or operator otherwise subject to a general North Dakota pollutant discharge elimination system permit, the applicability of the general permit to the individual North Dakota pollutant discharge elimination system permittee is automatically terminated on the effective date of the individual permit.

(4) A permittee, excluded from a general permit solely because the permittee already has an individual permit, may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

3. **Federal requirements.** General permits, 40 CFR 122.28, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-27. Other requirements - Conflicts of interest.

Conflicts of interest shall comply with 40 CFR part 123.25(c), which is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-28. Appeal.

Any person who has received notice of the final determination of the department to deny, suspend, or revoke the applicant's or permittee's national pollutant discharge elimination system application or permit shall have a right to petition the department for relief pursuant to North Dakota Century Code section 61-28-07.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-29. Toxic pollutant effluent standards.

40 CFR 129 is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-30. Secondary treatment regulations.

40 CFR 133 is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-31. Effluent guidelines and standards.

The 40 Code of Federal Regulations, subchapter N, with the exception of part 403, as it exists on February 12, 2003, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04

33.1-16-01-32. Criteria and standards for the national pollutant discharge elimination system.

1. Criteria and standards for imposing technology-based treatment requirements under sections 301(b) and 402 of the Act, 40 CFR 125, subpart A, is incorporated into this chapter by reference.

2. Criteria for issuance of permits to acquaculture projects, 40 CFR 125, subpart B, is incorporated into this chapter by reference.

3. Criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Act, 40 CFR 125, subpart D, is incorporated into this chapter by reference.

4. Criteria for determining alternative effluent limitations under section 316(a) of the Act, 40 CFR 125, subpart H, is incorporated into this chapter by reference.

5. Criteria applicable to cooling water intake structures under section 316(b) of the Act, 40 CFR 125, subpart I, is incorporated into this chapter by reference.

6. Criteria and standards for imposing conditions for the disposal of sewage sludge under section 405 of the Act, 40 CFR 125, subpart L, is incorporated into this chapter by reference.

History: Effective January 1, 2019.
General Authority: NDCC 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 61-28-04