ARTICLE 33.1-24
HAZARDOUS WASTE MANAGEMENT

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CHAPTER 33.1-24-01
GENERAL PROVISIONS

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33.1-24-01-01. Purpose.

It is the purpose of this article to provide for the comprehensive regulation of hazardous waste from "cradle-to-grave" in order to protect public health, safety and welfare, and to enhance the environment for the people of North Dakota.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-02. Scope.

This article is applicable to all hazardous waste generators; transporters; and owners or operators of treatment, storage, or disposal facilities.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-03. Authority.

The department has been authorized to promulgate and administer this article under the provisions of North Dakota Century Code chapter 23.1-04.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-04. Definitions.

As used in this article the following words have the meaning ascribed to them unless otherwise made inappropriate by use and context:

1. "Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Act" means North Dakota Century Code chapter 23.1-04.

3. "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the department receives certification of final closure.

4. "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of the Act and which is not a closed portion. (See also "closed portion" and "inactive portion".)

5. "Acute hazardous waste" means hazardous wastes that meet the listing criteria in subdivision b of subsection 1 of section 33.1-24-02-09 and therefore are listed in section 33.1-24-02-16 with the assigned hazard code (H) or are listed in subsection 5 of section 33.1-24-02-18.

6. "Administrator" or "regional administrator" means the administrator or regional administrator of the environmental protection agency, or that officer's designee.

7. "AES filing compliance date" means the date that environmental protection agency announces in the federal register on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file environmental protection agency information in the automated export system or its successor system, under the international trade data system platform.

8. "Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

9. "Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under subsection 10 of section 33.1-24-02-04 of this chapter, and accumulates the waste for more than ten days.

10. "Airbag waste handler" means any person, by site, who generates airbag waste that is subject to hazardous waste regulations.

11. "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tank or tanks, between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal offsite.

12. "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

13. "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (for example, part of a facility), for example, the plant manager, superintendent, or person of equivalent responsibility.

14. "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

15. "Boiler" means an enclosed device using controlled flame combustion and:

    a. Boilers must have the following characteristics:

        (1) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

        (2) The unit's combustion chamber and primary energy recovery section or sections must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section or sections (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section or sections are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design--process heaters (units that transfer energy directly to processed steam) and fluidized bed combustion units;

        (3) While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

        (4) The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit should be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

    b. The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards of section 33.1-24-01-11.

16. "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (for example, power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

17. "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

18. "Cathode ray tube" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact cathode ray tube means a cathode ray tube whose vacuum has not been released. A used, broken cathode ray tube means glass removed from its housing or casing whose vacuum has been released.

19. "Cathode ray tube collector" means a person who receives used, intact cathode ray tubes for recycling, repair, resale, or donation.

20. "Cathode ray tube exporter" means any person in the United States who initiates a transaction to send used cathode ray tubes outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

21. "Cathode ray tube glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture cathode ray tube glass.

22. "Cathode ray tube processing" means conducting all of the following activities:

    a. Receiving broken or intact cathode ray tubes;

    b. Intentionally breaking intact cathode ray tubes or further breaking or separating broken cathode ray tubes; and

    c. Sorting or otherwise managing glass removed from cathode ray tube monitors.

23. "Central accumulation area" means any onsite hazardous waste accumulation area with hazardous waste accumulating in units subject to sections 33.1-24-03-28 (for small quantity generators) or 33.1-24-03-29 (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to operate under sections 33.1-24-03-60 through 33.1-24-03-77 is also subject to section 33.1-24-03-72 when accumulating unwanted material or hazardous waste or both.

24. "Certification" means a statement of professional opinion based on knowledge and belief.

25. "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

26. "Component" means:

    a. Either the tank or ancillary equipment of a tank system; or

    b. Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (for example, a pump seal, pump, kiln liner, or kiln thermocouple).

27. "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

28. "Constituent" or "hazardous waste constituent" means a constituent that caused the department to list the hazardous waste in chapter 33.1-24-02, or a constituent listed in Table 1 of section 33.1-24-02-14.

29. "Contained" means held in a unit (including a land-based unit as defined in this section) that meets the following criteria:

    a. The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

    b. The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

    c. The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

    d. Hazardous secondary materials in units that meet the applicable requirements of sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819, or subsection 5 of section 33.1-24-06-16.

30. "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

31. "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of sections 33.1-24-05-475 through 33.1-24-05-479 and subpart DD of 40 CFR 265.

32. "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

33. "Corrosion expert" means a person who, by reason of the person's knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the national association of corrosion engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

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

35. a. "Designated facility" means a hazardous waste treatment, storage, or disposal facility that:

        (1) Has received a permit (or interim status) in accordance with the requirements of chapters 33.1-24-06 and 33.1-24-07;

        (2) Has received a permit (or interim status) from a state authorized in accordance with 40 CFR part 271; or

(3) Is regulated under subdivision b of subsection 3 of section 33.1-24-02-06 or sections 33.1-24-05-230 through 33.1-24-05-234; and

(4) Has been designated on the manifest by the generator pursuant to section 33.1-24-03-04.

b. Designated facility also means a generator site designated on the manifest to receive the generator's waste as a return shipment from a facility that has rejected the waste in accordance with subsection 6 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16.

c. If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

36. "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in subsections 1 and 3 of section 33.1-24-05-713. A facility at which a particular category of universal waste is only accumulated is not a destination facility for the purposes of managing that category of universal waste.

37. "Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

38. "Dioxins and furans" means tetra-chlorinated, penta-chlorinated, hexa-chlorinated, hepta-chlorinated, and octa-chlorinated dibenzo dioxins and furans.

39. "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

40. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water including ground water.

41. "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which wastes will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

42. "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kickback or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

43. "Electronic import-export reporting compliance date" means the date that the environmental protection agency announces in the federal register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to the environmental protection agency using the environmental protection agency's waste import export tracking system, or its successor system.

44. "Electronic manifest" (or e-manifest) means the electronic format of the hazardous waste manifest which is obtained from the environmental protection agency's national e-manifest system and transmitted electronically to the system, and which is the legal equivalent of environmental protection agency forms 8700-22 (manifest) and 8700-22A (continuation sheet).

45. "Electronic manifest system (or e-manifest system)" means the environmental protection agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

46. "Elementary neutralization unit" means a device which:

    a. Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in section 33.1-24-02-12, or are listed in chapter 33.1-24-02 only for this reason; and

    b. Meets the definition of tank, tank systems, container, transport vehicle, or vessel.

47. "Equivalent method" means any testing or analytical method approved by the department under sections 33.1-24-01-06 and 33.1-24-01-07.

48. "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

    a. The owner or operator has obtained all necessary federal, state, and local approvals or permits necessary to begin physical construction; and

    b. Either of the following:

        (1) A continuous onsite, physical construction program has begun; or

        (2) The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

49. "Existing portion" means that land surface area of an existing waste management unit, included in part A of the permit application, as originally filed, on which wastes have been placed prior to the issuance of a permit.

50. "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous onsite physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

51. "Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

52. "Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An

explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions, or transporting, or any combination, those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

53. "Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include United States department of defense emergency explosive ordnance disposal, technical escort unit, and department of defense-certified civilian or contractor personnel and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

54. "Facility" means:

    a. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

    b. For the purpose of implementing corrective action under section 33.1-24-05-58 or 33.1-24-05-1031 all contiguous property under the control of the owner or operator seeking a permit under North Dakota Century Code chapter 23.1-04. This definition also applies to facilities implementing corrective action under Resource Conservation and Recovery Act section 3008(h).

    c. Notwithstanding subdivision b, a remediation waste management site is not a facility that is subject to section 33.1-24-05-58, but is subject to corrective action requirements if the site is located within such a facility.

55. "Facility mailing list" means the mailing list for a facility developed and maintained by the department in accordance to the following:

    a. Including those persons who request in writing to be added to the facility mailing list;

    b. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

    c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.)

56. "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the government printing office.

57. "Federal, state, and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state, or local hazardous waste control statutes, regulations, or ordinances.

58. "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under chapter 33.1-24-05 are no longer conducted at the facility unless subject to the provisions in section 33.1-24-03-12.

59. "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

60. "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

61. "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

62. "Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specification of another component.

63. "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in chapter 33.1-24-02 or whose act first causes a hazardous waste to become subject to regulation.

64. "Ground water" means water below the land surface in a zone of saturation.

65. "Hazardous secondary material" means a secondary material (for example, spent material, byproduct, or sludge) that, when discarded, would be identified as hazardous waste under chapter 33.1-24-02.

66. "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this subsection, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator.

67. "Hazardous waste" means a hazardous waste as defined in chapter 33.1-24-02.

68. "Hazardous waste constituent". See "constituent".

69. "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

70. "Hazardous waste number" means the number assigned to each hazardous waste identified in chapter 33.1-24-02.

71. "Identification number" means the number assigned by the environmental protection agency and the department to each generator; transporter; and treatment, storage, or disposal facility.

72. "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

73. "Inactive portion" means that portion of a facility which is not operated after the effective date of this chapter. (See also "active portion" and "closed portion".)

74. "Incinerator" means any enclosed device that:

a. Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

b. Meets the definition of infrared incinerator or plasma arc incinerator.

75. "Incompatible waste" means a hazardous waste which is unsuitable for:

a. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or

b. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dust, mists, fumes, gases, or flammable fumes or gases.

(See appendix III of chapter 33.1-24-05 for examples.)

76. "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

77. "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of material for energy:

a. Cement kilns;

b. Lime kilns;

c. Aggregate kilns;

d. Phosphate kilns;

e. Coke ovens;

f. Blast furnaces;

g. Smelting, melting, and refining furnaces (including pyrometallurgical devices, such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces);

h. Titanium dioxide chloride process oxidation reactors;

i. Methane reforming furnaces;

j. Pulping liquor recovery furnaces;

k. Combustion devices used in the recovery of sulfur values from spent sulfuric acid;

l. Halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty percent as generated; or

m. Such other devices as the department may, after notice and comment, add to this list on the basis of one or more of the following factors:

(1) The design and use of the device primarily to accomplish recovery of material products;

(2) The use of the device to burn or reduce raw materials to make a material product;

(3) The use of a device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feed stock;

(4) The use of a device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(5) The use of a device in common industrial practice to produce a material product; and

(6) Other factors, as appropriate.

78. "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

79. "Inground tank" means a device meeting the definition of a "tank" in this section, whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

80. "Injection well" means a well into which fluids are injected. (See also the definition of "underground injection" in this section.)

81. "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

82. "Installation inspector" means a person who, by reason of knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

83. "Intermediate facility" means any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.

84. "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

85. "Lamp", also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste lamps include fluorescent, high-intensity discharge, neon, mercury vapor, high-pressure sodium, and metal halide lamps.

86. "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

87. "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

88. "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an

underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

89. "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

90. "Large quantity generator" means a generator who generates any of the following amounts in a calendar month.

    a. Greater than or equal to one thousand kilograms [2,200 pounds] of nonacute hazardous waste;

    b. Greater than one kilogram [2.2 pounds] of acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18, listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18; or

    c. Greater than one hundred kilograms [220 pounds] of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18.

91. "Leachate" means any liquid, including any suspended components in the liquid, that have percolated through or drained from hazardous waste.

92. "Leak detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (for example, daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

93. "Liner" means a continuous layer of natural or manmade materials beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

94. "Major facility" means any facility classified as such by the environmental protection agency in conjunction with the department.

95. "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

96. "Manifest" means the shipping document environmental protection agency form 8700-22 (including, if necessary, environmental protection agency form 8700-22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of chapters 33.1-24-03 and 33.1-24-04, sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, 33.1-24-05-800 through 33.1-24-05-819, and subsection 5 of section 33.1-24-06-16.

97. "Manifest tracking number" means the alphanumeric identification number (for example, a unique three-letter suffix preceded by nine numerical digits), which is preprinted in item 4 of the manifest by a registered source.

98. "Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

99. "Military munitions" means all ammunition products and components produced or used by or for the United States department of defense or the United States armed services for national defense and security, including military munitions under the control of the department of defense, the United States coast guard, the United States department of energy, and national guard personnel. The term military munitions includes confined gaseous, liquid, and solid propellants; explosives; pyrotechnics; chemical and riot control agents; smokes; and incendiaries used by department of defense components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items; improvised explosive devices; and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under the department of energy's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

100. "Mining overburden returned to the minesite" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

101. "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container; tank; surface impoundment; pile; land treatment unit; landfill; incinerator; boiler; industrial furnace; underground injection well with appropriate technical standards under 40 CFR part 146; containment building; corrective action management unit; unit eligible for research, development, and demonstration permit under section 33.1-24-06-20; or staging pile.

102. "Movement" means that hazardous waste transported to a facility in an individual vehicle.

103. "Municipality" means a city, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

104. "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced, after November 19, 1980. (See also "existing hazardous waste management facility".)

105. "New tank system" or "new tank components" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986, except; however, for purposes of subdivision b of subsection 7 of section 33.1-24-05-106, a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system".)

106. "No free liquids" as used in subdivision w of subsection 1 and subdivision p of subsection 2 of section 33.1-24-02-04, means that solvent-contaminated wipes may not contain free liquids as determined by method 9095B (paint filter liquids test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (environmental protection publication SW-846), as incorporated by reference in section 33.1-24-01-05, and that there is no free liquid in the container holding the wipes.

107. "Nonacute hazardous waste" means all hazardous wastes that are not acute hazardous waste.

108. "Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way the bottom of the tank is on the same level as the adjacent surrounding surface so the external tank bottom cannot be visually inspected.

109. "Onsite" means the same or geographically contiguous property which may be divided by public or private right of way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right of way. Noncontiguous property owned by the same person, but connected by a right of way which that person controls and to which the public does not have access is also considered onsite property.

110. "Open burning" means the combustion of any material without the following characteristics:

    a. Control of combustion air to maintain adequate temperature for efficient combustion;

    b. Containment of the combustion reactions in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

    c. Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)

111. "Operator" means the person responsible for the overall operation of a facility.

112. "Owner" means the person who owns a facility or part of a facility.

113. "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of chapter 33.1-24-05 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

114. "Permit" means an authorization, license, or equivalent control document issued by the department to implement the requirements of chapters 33.1-24-06 and 33.1-24-07. Permit includes permit by rule (section 33.1-24-06-18), emergency permit (subsection 1 of section 33.1-24-06-19), and standardized permit (sections 33.1-24-06-45 through 33.1-24-06-85). Permit does not include hazardous waste interim status (section 33.1-24-06-16), or any permit that has not been the subject of final department action, such as a draft permit or a proposed permit.

115. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

116. "Personnel" or "facility personnel" means all persons who work at, or oversee the operation of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of chapter 33.1-24-05 or 40 CFR part 265.

117. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

    a. Is a new animal drug under federal Food, Drug, and Cosmetic Act section 201(w);

    b. Is an animal drug that has been determined by regulation of the secretary of health and human services not to be a new animal drug; or

c. Is an animal feed under federal Food, Drug, and Cosmetic Act section 201(x) that bears or contains any substances described by subdivision a or b.

118. "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

119. "Plasma arc incinerator" means any enclosed device using a high-intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

120. "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

121. "Publicly owned treatment works" means any device or system used in the treatment (including recycling or reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by this state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

122. "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering, and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground water monitoring and contaminant fate and transport.

123. "Recognized trader" means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

124. "Remanufacturing" means processing a higher value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial grade material. For the purpose of this subsection, a hazardous secondary material is considered higher value if it was generated from the use of a commercial grade material in a manufacturing process and can be remanufactured into a similar commercial grade material.

125. "Remediation waste" means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that are managed for implementing cleanup.

126. "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing, or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under section 33.1-24-05-58, but is subject to corrective action requirements if the site is located in such a facility.

127. "Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and which is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or department-approved corrective action.

128. "Representative sample" means a sample of a universe or whole (for example, waste pile, lagoon, or ground water), which can be expected to exhibit the average properties of the universe or whole.

129. "Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

130. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

131. "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

132. "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

133. "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of two thousand five hundred British thermal unit per pound of sludge treated on a wet-weight basis.

134. "Small quantity generator" means a generator who generates the following amounts in a calendar month:

a. Greater than one hundred kilograms [220 pounds] but less than one thousand kilograms [2,200 pounds] of nonacute hazardous waste;

b. Less than or equal to one kilogram [2.2 pounds] of acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18; and

c. Less than or equal to one hundred kilograms [220 pounds] of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18.

135. "Solid waste" means a solid waste as defined in section 33.1-24-02-02.

136. a. "Solvent-contaminated wipe" means a wipe that, after use or after cleaning up a spill, either:

(1) Contains one or more of the F001 through F005 solvents listed in section 33.1-24-02-16 or the corresponding P- or U-listed solvents found in section 33.1-24-02-18;

(2) Exhibits a hazardous characteristic found in sections 33.1-24-02-10 through 33.1-24-02-14 when that characteristic results from a solvent listed in chapter 33.1-24-02; or

(3) Exhibits only the hazardous waste characteristic of ignitability found in section 33.1-24-02-11 due to the presence of one or more solvents that are not listed in chapter 33.1-24-02; or

(4) Any combination of paragraphs 1, 2, or 3.

b. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other

than solvents, are not eligible for the exclusions at subdivision w of subsection 1 of section 33.1-24-02-04 and subdivision p of subsection 2 of section 33.1-24-02-04.

137. "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

138. "Staging pile" means an accumulation of solid, nonflowing remediation waste that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the department according to the requirements of section 33.1-24-05-554.

139. "Standardized permit" means a hazardous waste permit issued under sections 33.1-24-07-40 through 33.1-24-07-54 and sections 33.1-24-06-45 through 33.1-24-06-85 authorizing the facility owner or operator to manage hazardous waste. The standardized permit may have two parts--a uniform portion issued in all cases and a supplemental portion issued at the department's discretion.

140. "State" means this state.

141. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

142. "Sump" means any pit or reservoir that meets the definition of tank and those troughs or trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities, except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

143. "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding; storage; settling; and aeration pits, ponds, and lagoons.

144. "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic), which provide structural support.

145. "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

146. "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

147. "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

148. "Toxicity equivalence" means the international method of relating the toxicity of various dioxin, or furan, or both congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

149. "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, or other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

150. "Transport vehicle" means a motor vehicle or railcar used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

151. "Transportation" means the movement of hazardous wastes by air, rail, highway, or water.

152. "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

153. "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

    a. Whether the waste is amenable to the treatment process;

    b. What pretreatment (if any) is required;

    c. The optimal process conditions needed to achieve the desired treatment;

    d. The efficiency of a treatment process for a specific waste or wastes; or

    e. The characteristics and volumes of residuals from a particular treatment process.

    Also included in this definition for the purpose of subsections 5 and 6 of section 33.1-24-02-04 exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effect studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

154. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

155. "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

156. "Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also the definition of "injection well" in this section.)

157. "Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

158. "Unfit for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

159. "User of the electronic manifest system" means a hazardous waste generator; a hazardous waste transporter; an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility; or any other person that:

    a. Is required to use a manifest to comply with:

(1) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an offsite-designated facility for treatment, storage, recycling, or disposal; or

(2) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

b. Elects to use the system to obtain, complete, and transmit an electronic manifest format supplied by the environmental protection agency electronic manifest system; or

c. Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with paragraph 5 of subdivision b of subsection 1 of section 33.1-24-05-38, or the applicable requirements of subsection 5 of section 33.1-24-06-16. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

160. "United States" means the fifty states, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the commonwealth of the northern Mariana Islands.

161. "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of sections 33.1-24-05-700 through 33.1-24-05-799:

a. Batteries as described in section 33.1-24-05-702;

b. Pesticides as described in section 33.1-24-05-703;

c. Mercury-containing equipment as described in section 33.1-24-05-704;

d. Lamps as described in section 33.1-24-05-705; and

e. Aerosol cans as described in section 33.1-24-05-706.

162. "Universal waste handler":

a. Means:

(1) A generator (as defined in this section) of universal waste; or

(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

b. Does not mean:

(1) A person who treats, except under the provisions of subsection 1 or 3 of section 33.1-24-05-713, subsection 1 of section 33.1-24-05-733, or subsection 3 of section 331-24-05-733, disposes of, or recycles, except under the provisions of subsection 5 of section 33.1-24-05-713 or subsection 5 of section 33.1-24-05-733, universal waste; or

(2) A person engaged in the offsite transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

163. "Universal waste transporter" means a person engaged in the offsite transportation of universal waste by air, rail, highway, or water.

164. "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

165. "Uppermost aquifer" means the natural geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

166. "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

167. "Very small quantity generator" means any generator who generates less than or equal to the following amounts in a calendar month:

    a. One hundred kilograms [220 pounds] of nonacute hazardous waste;

    b. One kilogram [2.2 pounds] of acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18; and

    c. One hundred kilograms [220 pounds] or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 33.1-24-02-16 or subsection 5 of section 33.1-24-02-18.

168. "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

169. "Wastewater treatment unit" means a device which:

    a. Is part of a wastewater treatment facility which is subject to regulation under either section 402 or 307(b) of the Clean Water Act;

    b. Receives and treats or stores an influent wastewater, which is a hazardous waste as identified in section 33.1-24-02-03, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in section 33.1-24-02-03, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in section 33.1-24-02-03; and

    c. Meets the definition of tank or tank system.

170. "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

171. "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form and often walled with bricks or tubing to prevent the earth from caving in.

172. "Well injection". (See "underground injection".)

173. "Wipe" means a woven or nonwoven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

174. "Zone of engineering control" means an area under the control of the owner or operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

History: Effective January 1, 2019; amended effective July 1, 2020; July 1, 2021.

General Authority: NDCC 23.1-04-03
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-05. Incorporation by reference.

1. When used in this article, the publications listed in this section are incorporated by reference. Copies may be inspected at the library, United States environmental protection agency, 1200 Pennsylvania Avenue NW (3403T), Washington, D.C. 20460, libraryhq@epa.gov; or at the national archives and records administration. For information on the availability of this material at the national archives and records administration, call 202-741-6030, or go to:

   http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

2. The following materials are available for purchase from the American society for testing and materials, 100 Barr Harbor Drive, P. O. Box C700, West Conshohocken, Pennsylvania 19428-2959:

   a. ASTM D93-79 or D93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester".

   b. ASTM D1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography".

   c. ASTM D2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography".

   d. ASTM D2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)".

   e. ASTM D2879-92, "Standard Test Method for Vapor Pressure -Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope".

   f. ASTM D3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester".

   g. ASTM E168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis".

   h. ASTM E169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis".

   i. ASTM E260-85, "Standard Practice for Packed Column Gas Chromatography".

   j. ASTM E926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals", Test Method C - Bomb, Acid Digestion Method.

   k. ASTM D6450-99, "Standard Test Method for Flash Point by Continuously Closed Cup Tester".

3. The following materials are available for purchase from the national technical information service, 5285 Port Royal Road, Springfield, Virginia 22161, 703-605-6060 or 800-553-6847; or for purchase from the superintendent of documents, United States government printing office, Washington, D.C. 20402, 202-512-1800:

   a. "APTI Course 415: Control of Gaseous Emissions", environmental protection agency publication EPA-450/2-81-005, December 1981.

b. Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Nonpolar Material) by Extraction and Gravimetry:

(1) Revision A, EPA-821-R-98-002, February 1999.

(2) Revision B, EPA-821-R-10-001, February 2010.

c. The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", environmental protection agency publication SW-846, third edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times):

(1) Method 0010, dated September 1986 and in the Basic Manual.

(2) Method 0020, dated September 1986 and in the Basic Manual.

(3) Method 0030, dated September 1986 and in the Basic Manual.

(4) Method 1320, dated September 1986 and in the Basic Manual.

(5) Method 1311, dated September 1992 and in Update I.

(6) Method 1330A, dated September 1992 and in Update I.

(7) Method 1312, dated September 1994 and in Update III.

(8) Method 0011, dated December 1996 and in Update III.

(9) Method 0023A, dated December 1996 and in Update III.

(10) Method 0031, dated December 1996 and in Update III.

(11) Method 0040, dated December 1996 and in Update III.

(12) Method 0050, dated December 1996 and in Update III.

(13) Method 0051, dated December 1996 and in Update III.

(14) Method 0060, dated December 1996 and in Update III.

(15) Method 0061, dated December 1996 and in Update III.

(16) Method 9071B, dated April 1998 and in Update IIIA.

(17) Method 1010A, dated November 2004 and in Update IIIB.

(18) Method 1020B, dated November 2004 and in Update IIIB.

(19) Method 1110A, dated November 2004 and in Update IIIB.

(20) Method 1310B, dated November 2004 and in Update IIIB.

(21) Method 9010C, dated November 2004 and in Update IIIB.

(22) Method 9012B, dated November 2004 and in Update IIIB.

(23) Method 9040C, dated November 2004 and in Update IIIB.

(24) Method 9045D, dated November 2004 and in Update IIIB.

(25) Method 9060A, dated November 2004 and in Update IIIB.

(26) Method 9070A, dated November 2004 and in Update IIIB.

(27) Method 9095B, dated November 2004 and in Update IIIB.

4. The following materials are available for purchase from the national fire protection association, 1 Batterymarch Park, P. O. Box 9101, Quincy, Massachusetts 02269-9101:

   a. "Flammable and Combustible Liquids Code" (NFPA 30) (1977 or 1981), IBR approved for subsection 2 of section 33.1-24-03-28, subsection 2 of section 33.1-24-05-111, subsection 2 of section 33.1-24-05-1112, and subsection 5 of section 33.1-24-06-16.

   b. [Reserved]

5. The following materials are available for purchase from the American petroleum institute, 1220 L Street NW, Washington, D.C. 20005:

   a. API publication 2517, Third edition, February 1989, "Evaporative Loss from External Floating - Roof Tanks".

   b. [Reserved]

6. The following materials are available for purchase from the environmental protection agency, Research Triangle Park, North Carolina:

   a. "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised", October 1992, environmental protection agency publication number EPA-450/R-92-019.

   b. [Reserved]

7. The following materials are available for purchase from the organization for economic cooperation and development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France:

   a. Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for subsection 1 of section 33.1-24-03-52, subsection 2 of section 33.1-24-03-53, subsection 4 of section 33.1-24-03-53, subsection 7 of section 33.1-24-03-53, subsection 2 of section 33.1-24-03-55, and subsection 4 of section 33.1-24-03-55.

   b. [Reserved]

History: Effective January 1, 2019; amended effective July 1, 2020; July 1, 2021.
General Authority: NDCC 23.1-04-03
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-06. General rulemaking petitions.

1. Any person may petition the department to modify or revoke any provisions in chapters 33.1-24-01 through 33.1-24-05. This section sets forth general requirements which apply to all

such petitions. Section 33.1-24-01-07 sets forth additional requirements for petitions to add a testing or analytical method to chapter 33.1-24-02 or sections 33.1-24-05-01 through 33.1-24-05-190, 33.1-24-05-300 through 33.1-24-05-524, 33.1-24-05-550 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-819, or subsection 5 of section 33.1-24-06-16. Section 33.1-24-01-08 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from section 33.1-24-02-03 or the lists of hazardous wastes in sections 33.1-24-02-15 through 33.1-24-02-19. Section 33.1-24-01-08 sets forth additional requirements for petitions to amend sections 33.1-24-05-700 through 33.1-24-05-799 to include additional hazardous wastes or categories of hazardous waste as universal waste.

2. Each petition must be submitted to the department by certified mail and must include:

   a. The petitioner's name and address;

   b. A statement of the petitioner's interest in the proposed action;

   c. A description of the proposed action, including (where appropriate) suggested regulatory language; and

   d. A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

3. The department will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision.

4. Upon the written request of any interested person, the department may, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The department may, in any case, decide on its own motion to hold an informal public hearing.

5. After evaluating all public comments, the department will make a final decision.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-07. Petitions for equivalent testing or analytical methods.

1. Any person seeking to add a testing or analytical method to chapter 33.1-24-02 or 33.1-24-05 may petition for a regulatory amendment to this section and section 33.1-24-01-06. To be successful, the person must demonstrate to the satisfaction of the department the proposed method is equal to or superior to the corresponding method prescribed in chapter 33.1-24-02 or 33.1-24-05, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

2. Each petition must include, in addition to the information required by section 33.1-24-01-06:

   a. A full description of the proposed method, including all procedural steps and equipment used in the method;

   b. A description of the types of wastes or waste matrices for which the proposed method may be used;

   c. Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in chapter 33.1-24-02 or 33.1-24-05;

d. An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

e. A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

3. After receiving a petition for an equivalent method, the department may request any additional information of the proposed method which it may reasonably require to evaluate the method.

4. If the department amends the regulations to permit use of a new testing method, the method will be incorporated by reference in section 33.1-24-01-05.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-08. Petitions to amend chapter 33.1-24-02 to exclude a waste produced at a particular facility and amend chapter 33.1-24-05 to include additional hazardous waste or wastes as universal waste.

1. Any person seeking to exclude a waste at a particular generating facility from the lists in sections 33.1-24-02-15 through 33.1-24-02-19 may petition for a regulatory amendment under this section and section 33.1-24-01-06. To be successful:

   a. The petitioner must demonstrate to the satisfaction of the department the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

   b. Based on a complete application, the department must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded; however, still may be a hazardous waste by operation of sections 33.1-24-02-10 through 33.1-24-02-14.

2. The procedures in this section and section 33.1-24-01-06 may also be used to petition the department for a regulatory amendment to exclude waste from paragraph 2 of subdivision b of subsection 1 of section 33.1-24-02-03 or subsection 3 of section 33.1-24-02-03, a waste which is described in these sections and is either a waste listed in sections 33.1-24-02-15 through 33.1-24-02-19, or is derived from a waste listed in sections 33.1-24-02-15 through 33.1-24-02-19. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by subsection 1. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, this demonstration must be made with respect to the waste mixture as a whole; analysis must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of sections 33.1-24-02-10 through 33.1-24-02-14.

3. If the waste is listed with codes "I", "C", "R", or "E" in sections 33.1-24-02-15 through 33.1-24-02-19:

   a. The petitioner must show the waste does not exhibit the relevant characteristics for which the waste was listed as defined in sections 33.1-24-02-11, 33.1-24-02-12, 33.1-24-02-13, or 33.1-24-02-14 using any applicable methods prescribed therein. The petitioner also must show the waste does not exhibit any of the other characteristics defined in sections

33.1-24-02-11, 33.1-24-02-12, 33.1-24-02-13, or 33.1-24-02-14 using any applicable methods prescribed therein.

b. Based on a complete application, the department must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded; however, still may be a hazardous waste by operation of sections 33.1-24-02-10 through 33.1-24-02-14.

4. If the waste is listed with code "T" in sections 33.1-24-02-15 through 33.1-24-02-19:

   a. The petitioner must demonstrate the waste:

      (1) Does not contain the constituent or constituents (as defined in appendix IV of chapter 33.1-24-02) that caused the department to list the waste; or

      (2) Although containing one or more of the hazardous constituents (as defined in appendix IV of chapter 33.1-24-02) that caused the department to list the waste, does not meet the criterion of subdivision c of subsection 1 of section 33.1-24-02-09 when considering the factors used by the department in paragraphs 1 through 11 of subdivision c of subsection 1 of section 33.1-24-02-09 under which the waste was listed as hazardous; and

   b. Based on a complete application, the department must determine where they have a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

   c. The petitioner must demonstrate the waste does not exhibit any characteristics defined in sections 33.1-24-02-11, 33.1-24-02-12, 33.1-24-02-13, and 33.1-24-02-14.

   d. A waste which is so excluded; however, still may be a hazardous waste by operation of sections 33.1-24-02-10 through 33.1-24-02-14.

5. If the waste is listed with the code "H" in sections 33.1-24-02-15 through 33.1-24-02-19:

   a. The petitioner must demonstrate the waste does not meet the criterion of subdivision b of subsection 1 of section 33.1-24-02-09;

   b. Based on a complete application, the department must determine where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

   c. The petitioner must demonstrate the waste does not exhibit any of the characteristics defined in sections 33.1-24-02-11, 33.1-24-02-12, 33.1-24-02-13, and 33.1-24-02-14 using any applicable methods prescribed therein.

   d. A waste which is so excluded; however, still may be a hazardous waste by operation of sections 33.1-24-02-10 through 33.1-24-02-14.

6. Reserved for listing radioactive wastes.

7. Reserved for listing infectious wastes.

8. Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

9. Each petition must include, in addition to the information required by subsection 2 of section 33.1-24-01-06:

   a. The name and address of the laboratory facility performing the sampling or tests of the wastes;

   b. The names and qualifications of the persons sampling and testing the wastes;

   c. The dates of sampling and testing;

   d. The location of the generating facility;

   e. A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

   f. A description of the waste and an estimate of average and maximum monthly and annual quantities of waste covered by the demonstration;

   g. Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste where the demonstration is based on the factors in subdivision c of subsection 1 of section 33.1-24-02-09;

   h. A description of the methodologies and equipment used to obtain the representative sample;

   i. A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, and preservation of the sample;

   j. A description of the tests performed (including results);

   k. The names and model numbers of the instruments used in performing the tests; and

   l. The following statement signed by the generator of the waste or the generator's authorized representative:

      I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

10. After receiving a petition for an exclusion, the department may request any additional information which it may reasonably require to evaluate the petition.

11. An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to wastes from any other facility.

12. The department may exclude only part of the waste for which the demonstration is submitted if it has reason to believe that variability of the waste justifies a partial exclusion.

13. Any person seeking to add a hazardous waste or category of hazardous waste to the universal waste regulations of sections 33.1-24-05-700 through 33.1-24-05-799 may petition

for a regulatory amendment under this subsection and sections 33.1-24-01-06, 33.1-24-05-760, and 33.1-24-05-761.

14. To be successful, the petitioner must demonstrate to the satisfaction of the department that regulation under the universal waste regulations of sections 33.1-24-05-700 through 33.1-24-05-799 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program. The petition must include the information required by subsection 2 of section 33.1-24-01-06. The petition should include as many of the factors listed in section 33.1-24-05-761 as are appropriate for the waste or category of waste addressed in the petition.

15. The department will grant or deny a petition using the factors listed in section 33.1-24-05-761. The decision will be based on the weight of evidence showing that regulation under sections 33.1-24-05-700 through 33.1-24-05-799 is appropriate for the waste or category of waste, will improve management for the waste or category of waste, and will improve implementation of the hazardous waste program.

16. The department may request additional information needed to evaluate the merits of the petition.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-09. Nonwaste determinations and variances from classification as a solid waste.

In accordance with the standards and criteria in sections 33.1-24-01-10 and 33.1-24-01-17 and the procedures in section 33.1-24-01-12, the department may determine on a case-by-case basis the following recycled materials are not solid wastes:

1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in subdivision h of subsection 3 of section 33.1-24-02-01);

2. Materials that are reclaimed and then reused within the original production process in which they were generated;

3. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

4. Hazardous secondary materials that are reclaimed in a continuous industrial process;

5. Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-10. Standards and criteria for variances from classification as a solid waste.

1. The department may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The department's decision will be based on the following criteria:

a. The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

b. The reason the applicant has accumulated the material for one or more years without recycling seventy-five percent of the volume accumulated at the beginning of the year;

c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

d. The extent to which the material is handled to minimize loss; and

e. Other relevant factors.

2. The department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feed stock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

b. The extent to which the material is handled before reclamation to minimize loss;

c. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

d. The location of the reclamation operation in relation to the production process;

e. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

f. Whether the person who generates the material also reclaims it; and

g. Other relevant factors.

3. The department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in section 33.1-24-01-19 and on whether all of the following decision criteria are satisfied:

a. Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

b. Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

c. Whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

d. Whether there is a market for the partially reclaimed material as demonstrated by known customer or customers who are further reclaiming the material (for example, records of sales or contracts, or both, and evidence of subsequent use, such as bills of lading); and

e. Whether the partially reclaimed material is handled to minimize loss.

4. The department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under subdivision y of subsection 1 of section 33.1-24-02-04 and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a hazardous waste permit or interim status standards. The department's decision will be based on the following criteria:

   a. The reclamation facility or intermediate facility must demonstrate the reclamation process for the hazardous secondary materials is legitimate pursuant to section 33.1-24-01-19;

   b. The reclamation facility or intermediate facility must satisfy the financial assurance condition in subparagraph f of paragraph 6 of subdivision y of subsection 1 of section 33.1-24-02-04;

   c. The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant noncomplier under Resource Conservation and Recovery Act Subtitle C, or must provide credible evidence the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration the facility has taken remedial steps to address the violations and prevent future violations, or the violations are not relevant to the proper management of the hazardous secondary materials;

   d. The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under sections 33.1-24-02-120 through 33.1-24-02-129;

   e. If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence the residuals will be managed in a manner that is protective of human health and the environment; and

   f. The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (for example, releases that are not covered by a permit, such as a permit to discharge to water or air), which may include potential releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures, and must include consideration of potential cumulate risks from other nearby potential stressors.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-11. Variance to be classified as a boiler.

In accordance with the standards and criteria in section 33.1-24-01-04 (definition of "boiler"), and the procedures in section 33.1-24-01-12, the department may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not

otherwise meet the definition of boiler contained in section 33.1-24-01-04, after considering the following criteria:

1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

2. The extent to which the combustion chamber and energy recovery equipment are of integral design;

3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

4. The extent to which exported energy is utilized;

5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce a steam, heated fluids, or heated gases; and

6. Other factors, as appropriate.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-12. Procedures for variances from classification as a solid waste, for variances to be classified as a boiler or for nonwaste determinations.

The department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers or applications for nonwaste determinations:

1. The applicant must apply to the department for the variance or nonwaste determination. The application must address the relevant criteria contained in section 33.1-24-01-10, 33.1-24-01-11 or 33.1-24-01-17, as applicable.

2. The department will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The department will accept comments on the tentative decision for thirty days, and may also hold a public hearing upon request or at the department's discretion. The department will issue a final decision after receipt of comments and after the hearing, if any.

3. In the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in section 33.1-24-01-10, 33.1-24-01-11, or 33.1-24-01-17 upon which a variance or nonwaste determination has been based, the applicant shall send a description of the change in circumstances to the department. The department may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or nonwaste determination or may require the facility to reapply for the variance or nonwaste determination.

4. Variances and nonwaste determination are effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must reapply for a variance or nonwaste determination. If a facility reapplies for a variance or nonwaste determination within six months, the facility may continue to operate under an expired variance or nonwaste determination until receiving a decision on the facility's reapplication from the department.

5. Facilities receiving a variance or nonwaste determination must provide notification as required by section 33.1-24-01-18.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-13. Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

The department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in paragraph 3 of subdivision b of subsection 1 of section 33.1-24-02-06 should be regulated under subsections 2 and 3 of section 33.1-24-02-06. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the department will consider the following factors:

1. The types of materials accumulated or stored and the amounts accumulated or stored;

2. The method of accumulation or storage;

3. The length of time the materials have been accumulated or stored before being reclaimed;

4. Whether any contaminants are being released into the environment or are likely to be so released; and

5. Other relevant factors. The procedures for this decision are set forth in section 33.1-24-01-14 of this chapter.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-14. Procedures for case-by-case regulation of hazardous waste recycling activities.

The department will use the following procedures when determining whether to regulate hazardous waste recycling activities described in paragraph 3 of subdivision b of subsection 1 of section 33.1-24-02-06 under the provisions of subsections 2 and 3 of section 33.1-24-02-06 rather than under the provisions of section 33.1-24-05-230:

1. If a generator is accumulating the waste, the department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of chapter 33.1-24-03. The notice will become final within thirty days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the department will hold a public meeting and will provide notice of the hearing to the public and allow public participation at the hearing. The department will issue a final order after the hearing stating whether or not compliance with chapter 33.1-24-03 is required. The order becomes effective thirty days after serving the decision unless the department specifies a later date or unless review by the department is requested. The order may be appealed to the department by any person who participated in the public hearing. The department may choose to grant or to deny the appeal. Final department action occurs when a final order is issued and department review procedures are exhausted.

2. If the person is accumulating the recyclable materials at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of chapters 33.1-24-06 and 33.1-24-07. The owner or operator of the facility must apply for a permit within no less than sixty days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the department's decision, the owner or

operator may do so in his or her permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the department's determination. The question whether the department's decision was proper will remain open for consideration during the public comment period discussed under chapter 33.1-24-07 and in any subsequent hearing.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-15. Variances.

The department may, on a case-by-case basis, grant a variance from this article upon such conditions and within such time limitations as it may prescribe provided it is no less stringent than the federal regulations, 40 CFR parts 260 through 281.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-16. Availability of information.

All records related to this article not specifically protected by state or federal law must be made available to the public in accordance with the following provisions:

1. **Definitions.** For the purposes of this article:

   a. "Record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by the department. The term includes informal writings (such as drafts and the like) and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by the department, its predecessors, its officers, and its employees by use of state funds or in the course of transacting official business. However, the term does not include materials which are legally owned by a department officer or employee in that person's purely personal capacity. Nor does the term include materials published by nonstate organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in the department's possession.

   b. "Request" means a request to inspect or obtain a copy of one or more records.

   c. "Requester" means any person who has submitted a request to the department.

2. **Requests to which this section applies.**

   a. This section applies to any written request received by the department whether or not it cites this availability of information section.

   b. Any written request to the department for existing records prepared by the department for routine public distribution, for example, pamphlets, copies of speeches, press releases, and educational materials must be honored. No individual determination is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public.

c. After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used, and submitted under subdivision e of subsection 1 of section 33.1-24-02-25 and subsection 1 of section 33.1-24-02-27, and with respect to information contained in hazardous waste export, import, and transit documents, prepared, used, and submitted under sections 33.1-24-03-50 through 33.1-24-03-55, whether submitted electronically into the environmental protection agency's waste import export tracking system or in paper format.

3. **Requests which do not reasonably describe records sought.** The department will make every reasonable effort to assist in the identification and description of records sought and to assist the requester in formulating a request. If a request is described in general terms (for example, all records having to do with a certain area), the department may communicate with the requester (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable by the requester. Such attempts will not be used as a means to discourage requests, but rather as a means to help identify with more specificity the records actually sought.

4. **Time allowed for issuance of initial determination.**

a. Except as otherwise provided in this section, not later than the tenth working day after the date of receipt of a request for records, the department shall issue a written determination to the requester stating which of the requested records will, and which will not, be released and the reason for any denial of a request. If the records are not known to exist or are not in the department's possession, the department shall so inform the requester. To the extent requested records which are in the department's possession are published by the department, the response may inform the requester that the records are available for inspection and where copies can be obtained.

b. The period of ten working days must be measured from the date the request is first received and logged into the department.

c. There must be excluded from the period of ten working days (or any extension thereof) any time which elapses between the date that a requester is notified by the department that the person's request does not reasonably identify the records sought, and the date that the requester furnishes a reasonable identification.

d. There must be excluded from the period of ten working days (or any extension thereof) any time which elapses between the date that a requester is notified by the department that prepayment or assurance of payment of fees is required, and the date the requester pays (or makes suitable arrangements to pay) such charges.

e. The department may extend the basic ten-day period established under subdivision a by a period not to exceed ten additional working days, by furnishing written notice to the requester within the basic ten-day period, stating the reasons for such extension and a date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension:

(1) There is a need to search and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) There is a need for consultation, which must be conducted with all practicable speed, with another division having a substantial interest in the determination of the request.

f. Failure of the department to issue a determination within the ten-day period or any authorized extension constitutes final department action which authorizes the requester to commence an action in an appropriate state district court to obtain the records.

5. **Initial denials of requests.**

a. An initial denial of a request may be issued only for the following reasons:

(1) The records requested are specifically protected by state or federal law; or

(2) The records are deemed enforcement-sensitive.

b. Each initial determination which denies, in whole or in part, a request for one or more existing located records must state that the requester may appeal the initial denial by sending a written appeal to the department within thirty days of receipt of the determination.

6. **Appeals from initial denials - Manner of making.**

a. Any person whose request for one or more existing, located department records has been denied, in whole or in part, by an initial determination may appeal that denial by addressing a written appeal to the department.

b. An appeal should be mailed no later than thirty calendar days after the date the requester received the initial determination on the request. An untimely appeal may be treated either as a timely appeal or as a new request.

c. The appeal letter must contain a reference to the subject line, the date of initial determination, and the name and address of the person who issued the initial denial. The appeal letter must also indicate which of the records to which access was denied are the subjects of the appeal.

7. **Appeal determination - By whom made.** The department's legal counsel shall make one of the following legal determinations in connection with an appeal from the initial denial of a request for an existing, located record:

a. The record must be disclosed;

b. The record must not be disclosed because a statute or a provision of this section so requires; or

c. The record is exempt from mandatory disclosure but legally may be disclosed as a matter of department discretion.

8. **Contents of determination denying appeal.** A determination denying an appeal from an initial denial must be in writing, must state which of the exemptions apply to each requested existing record, and must state the reasons for denial of the appeal. A denial determination must also state the name and position of the department employee who directed that the appeal be denied. Such a determination must further state that the person whose request was denied may obtain de novo judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or in which the department's records are located. However, no determination denying an appeal may reveal the existence or nonexistence of records if identifying the mere fact of the existence or

nonexistence of those records would reveal confidential business information, confidential personal information, or a confidential investigation. Instead of identifying the existence or nonexistence of the records, the determination must state that the appeal is denied because either the records do not exist or they are exempt from mandatory disclosure.

9. **Time allowed for issuance of appeal determination.**

   a. Except as otherwise provided in this section, not later than the twentieth working day after the date of receipt of the informational request of an appeal from an initial denial of a request for records, the department's legal counsel shall issue a written determination stating which of the requested records (as to which an appeal was made) shall be disclosed and which shall not be disclosed.

   b. The period of twenty working days must be measured from the date an appeal is first received by the department.

   c. The department's legal counsel may extend the basic twenty-day period established under subdivision a by a period not to exceed ten additional working days, by furnishing written notice to the requester within the basic twenty-day period stating the reason for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension:

      (1) There is a need to search for and collect the records from field facilities or other establishments that are separate from the office processing the appeal;

      (2) There is need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

      (3) There is a need for consultation, which must be conducted with all practicable speed, with another division having a substantial interest in the determination of the request.

   d. No extension of the twenty-day period shall be issued under subdivision c which would cause the total of all such extensions to exceed ten working days.

10. **Failure to decide on appeal by deadline.** Failure to decide if an appealed record must be disclosed by the deadline imposed in this section constitutes final agency action and the requester's right to judicial review.

11. **Fees - Payments - Waiver.**

   a. Fees will be charged to requesters for searching for and producing requested records in accordance with department policy.

   b. Reduction or waiver of fee. The fee chargeable under department policy must be reduced or waived by the department if the department determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Reduction or waiver of fees must be considered (need not necessarily be granted) in connection with each request from a representative of the press or other communications medium or from a public interest group.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1; 42 USC § 6926(b); 40 CFR § 271.21(e)(1)

Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19; 40 CFR § 271.21(e)(2)

33.1-24-01-17. Standards and criteria for nonwaste determinations.

1. An applicant may apply to the department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in subsections 2 or 3, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under section 33.1-24-01-10).

2. The department may grant a nonwaste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 33.1-24-01-19, and on the following criteria:

   a. The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

   b. Whether the capacity of the production process would use the hazardous secondary material in a reasonable timeframe and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

   c. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical, or from a health and environmental risk perspective than would otherwise be released by the production process; and

   d. Other relevant factors that demonstrate the hazardous secondary material is not discarded including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under section 33.1-24-02-02 or 33.1-24-02-04.

3. The department may grant a nonwaste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 33.1-24-01-19, and on the following criteria:

   a. Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

   b. Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

   c. Whether the capacity of the market would use the hazardous secondary material in a reasonable timeframe and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

   d. Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical, or from a health and environmental risk perspective than would otherwise be released by the production process; and

e. Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under section 33.1-24-02-02 or 33.1-24-02-04.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-18. Notification requirements for hazardous secondary materials.

1. Facilities managing hazardous secondary materials under section 33.1-24-01-09, subdivision x, y, or z of subsection 1 of section 33.1-24-02-04, must send a notification prior to operating under the regulatory provision and by March first of each even-numbered year thereafter, to the department using department-approved forms that include the following information:

   a. The name, address, and identification number (if applicable) of the facility;

   b. The name and telephone number of a contact person;

   c. The North American industry classification system code of the facility;

   d. The regulation under which the hazardous secondary materials will be managed;

   e. When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

   f. A list of hazardous secondary materials that will be managed according to the regulation (reported as the hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

   g. For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

   h. The quantity of each hazardous secondary material to be managed annually; and

   i. The certification (included in the department-approved form) signed and dated by an authorized representative of the facility.

2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation or regulations listed above, the facility shall notify the department within thirty days using a department-approved form. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages or reclaims, or any combination, hazardous secondary materials under the regulation or regulations above and does not expect to manage any amount of hazardous secondary materials for at least one year.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19

33.1-24-01-19. Legitimate recycling of hazardous secondary materials.

1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste rules must be legitimate. Hazardous secondary material that is not

legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this subsection.

a. Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

   (1) Contributes valuable ingredients to a product or intermediate;

   (2) Replaces a catalyst or carrier in the recycling process;

   (3) Is the source of a valuable constituent recovered in the recycling process;

   (4) Is recovered or regenerated by the recycling process; or

   (5) Is used as an effective substitute for a commercial product.

b. The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

   (1) Sold to a third party; or

   (2) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

c. The generator and the recycler shall manage the hazardous secondary material as a valuable commodity when the hazardous secondary material is under the generator's or recycler's control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

d. The product of the recycling process must be comparable to a legitimate product or intermediate:

   (1) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

      (a) The product of the recycling process does not exhibit a hazardous characteristic (as defined in sections 33.1-24-02-10 through 33.1-24-02-14) that analogous products do not exhibit; and

      (b) The concentrations of any hazardous constituents found in Appendix V of chapter 33.1-24-02 which are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

   (2) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

      (a) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (for example, commodity specifications grades for common metals); or

(b) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (for example, closed-loop recycling).

(3) If the product of the recycling process has levels of hazardous constituents which are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph 1 or 2, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling shall conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations that show the recycled product does not contain levels of hazardous constituents which pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained onsite for three years after the recycling operation has ceased. The person performing the recycling shall notify the department of this activity using a department-approved form.

2. [Reserved].

3. [Reserved].

History: Effective January 1, 2019
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05; S.L. 2017, ch. 199, § 19