CHAPTER 33.1-24-04
STANDARDS FOR TRANSPORTERS

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33.1-24-04-01. Scope.

1. This chapter establishes standards which apply to persons transporting hazardous waste within this state if the transportation requires a manifest under chapter 33.1-24-03.

2. This chapter does not apply to onsite transportation of hazardous waste by generators or by owners or by operators of permitted hazardous waste management facilities.

3. A transporter of hazardous waste must also comply with chapter 33.1-24-03 if the transporter:

   a. Transports hazardous waste into this state from abroad; or

   b. Mixes hazardous waste of different department of transportation shipping descriptions by placing them into a single container.

      [NOTE: The transporter in complying with these requirements does not become the generator of the waste.]

4. A transporter of hazardous waste that is being imported from, or exported to, any other country for purposes of recovery or disposal is subject to the requirements of this chapter and to all other relevant requirements of sections 33.1-24-03-50 through 33.1-24-03-55 for movement documents.

5. Persons responding to an explosives or munitions emergency in accordance with subparagraph d of paragraph 1 of subdivision g of subsection 6 of section 33.1-24-05-01 or paragraph 4 of subdivision g of subsection 6 of section 33.1-24-05-01 or 40 CFR 265.1(c)(11)(i)(D) or (iv) as incorporated by reference in subsection 5 of section 33.1-24-06-16, and item 4 of subparagraph a and subparagraph c of paragraph 9 of subdivision b of subsection 2 of section 33.1-24-06-01, are not required to comply with the standards of chapter 33.1-24-03.

6. Section 33.1-24-05-823 identifies how the requirements of this chapter apply to military munitions classified as solid waste under section 33.1-24-05-822.

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

33.1-24-04-02. Identification number and registration certificate.

1. A transporter may not transport hazardous wastes without having received an identification number, a transporter permit, and a registration certificate from the department.

2. A transporter who has not received an identification number and a registration certificate, or a transporter permit, may obtain them by applying to the department. Upon receiving the

request, the department will assign an identification number and issue a registration certificate to the transporter.

3. The department may assess and collect reasonable fees for the issuance of registration certificates and transporter permits.

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

33.1-24-04-03. Transfer facility requirements.

1. A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of section 33.1-24-03-08 at a transfer facility for a period of ten days or less is not subject to regulation under chapters 33.1-24-05 and 33.1-24-06 with respect to the storage of those wastes.

2. When consolidating the contents of two or more containers with the same hazardous waste into a new container, or when combining and consolidating two different compatible hazardous wastes, the transporter shall mark its containers of one hundred nineteen gallons or less with the following information:

   a. The words "hazardous waste"; and

   b. The applicable environmental protection agency hazardous waste number (environmental protection agency hazardous waste codes) in chapter 33.1-24-02 or subsection 3 of section 33.1-24-03-10.

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

33.1-24-04-04. The manifest system.

1. Transporters subject to manifesting requirements.

   a. Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the provisions of subsections 1 through 7 of section 33.1-24-03-07, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33.1-24-03-04, and signed with a valid and enforceable electronic signature as described in 40 CFR 262.25.

   b. **Exports.** For exports of hazardous waste subject to the requirements of sections 33.1-24-03-50 through 33.1-24-03-55, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and for exports occurring under the terms of a consent issued by the environmental protection agency on or after December 31, 2016, a movement document that includes all information required by subsection 4 of section 33.1-24-03-53.

   c. Compliance date for form revisions. The revised manifest form and procedures in sections 33.1-24-01-04, 33.1-24-02-07, 33.1-24-04-04, and 33.1-24-04-05, shall not apply until September 5, 2006 or article 33.1-24 is amended and effective, but not prior to September 5, 2006. The manifest form and procedures in sections 33.1-24-01-04, 33.1-24-02-07, 33.1-24-04-04, and 33.1-24-04-05, contained in article 33.1-24, amended December 1, 2003, shall be applicable until September 5, 2006, or when amended, but not after September 5, 2006.

d. Use of electronic manifest. Legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with subdivision b of subsection 1 of section 33.1-24-03-04, and used in accordance with this section in lieu of environmental protection agency forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these rules to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(1) Any requirement in these rules to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

(2) Any requirement in these rules to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these rules for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the hazardous materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(4) Any requirement in these rules for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the e-manifest system, provided that such copies are readily available for viewing and production if requested by any environmental protection agency inspector or authorized department representative.

(5) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the environmental protection agency system for which the transporter bears no responsibility.

e. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

f. Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(1) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph 3 of subdivision d, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for the transporter and all subsequent waste handler files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(2) On each printed copy, the transporter shall include a notation in the special handling and additional description space (item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not preprinted on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(3) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(4) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

g. Special procedures for electronic signature methods undergoing tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgment of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph 3 of subdivision d. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner or operator of the designated facility has signed this printed manifest copy with the owner or operator's ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

h. Post-receipt manifest data corrections. After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (e.g., waste handler) named on the manifest. Transporters may participate electronically in the post-receipt data corrections process by following the process described in section 33.1-24-05-38, which applies to corrections made to either paper or electronic manifest records.

2. Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

3. The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by environmental protection agency to the exporter on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by subsection 4 of section 33.1-24-03-53 also accompanies the hazardous waste. In the case of imports occurring under the terms consent issued by the environmental protection agency to the country of export or the importer on or after December 31, 2016, the transporter shall ensure that a movement document that includes all information required by subsection 4 of section 33.1-24-03-55 also accompanies the hazardous waste.

4. A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

a. Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest;

b. Retain one copy of the manifest in accordance with section 33.1-24-04-06; and

c. Give remaining copies of the manifest to the accepting transporter or designated facility.

5. The requirements of subsections 3, 4, and 6 do not apply to water (bulk shipment) transporters if:

a. The hazardous waste is delivered by water (bulk shipment) to the designated facility;

b. A shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for exports, and environmental protection agency acknowledgment of consent accompanies the hazardous waste;

c. The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

d. The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

e. A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with section 33.1-24-04-06.

6. For shipments involving rail transportation, the requirements of subsections 3, 4, and 5 do not apply and the following requirements do apply:

a. When accepting hazardous waste from nonrail transporter, the initial rail transporter must:

(1) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(2) Return a signed copy of the manifest to the nonrail transporter;

(3) Forward at least three copies of the manifest to:

(a) The next nonrail transporter, if any; or

(b) The designated facility, if the shipment is delivered to that facility by rail; or

(c) The last rail transporter designated to handle the waste in the United States; and

(4) Retain one copy of the manifest and rail shipping paper in accordance with section 33.1-24-04-06;

b. Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the environmental protection agency identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by the environmental protection agency on or after December 31, 2016, a movement document that includes all information required by subsection 4 of section 33.1-24-03-53 and subsection 4 of 33.1-24-03-55 accompanies the hazardous wastes at all times.

[NOTE: Intermediate rail transporters are not required to sign the manifest, movement document, or shipping paper.]

c. When delivering hazardous waste to the designated facility, a rail transporter must:

(1) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(2) Retain a copy of the manifest or signed shipping paper in accordance with section 33.1-24-04-06;

d. When delivering hazardous waste to a nonrail transporter, a rail transporter must:

(1) Obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(2) Retain a copy of the manifest in accordance with section 33.1-24-04-06; and

e. Before accepting hazardous waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

7. Transporters who transport hazardous waste out of the United States must:

a. Sign and date the manifest in the international shipment's block to indicate the date that the shipment left the United States;

b. Retain one copy in accordance with subsection 4 of section 33.1-24-04-06;

c. Return a signed copy of the manifest to the generator; and

d. For paper manifests only:

(1) Send a copy of the signed manifest to the e-Manifest system in accordance with the allowable methods specified in paragraph 5 of subdivision b of subsection 1 of section 33.1-24-05-38; and

(2) For shipments initiated prior to the automated export system filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a United States Customs official at the point of departure from the United States.

8. A transporter transporting hazardous waste from a generator who generates greater than one hundred kilograms but less than one thousand kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those in section 33.1-24-04-06 provided that:

a. The waste is being transported pursuant to a reclamation agreement as provided in subsection 5 of section 33.1-24-03-04;

b. The transporter records, on a log or shipping paper, the following information for each shipment:

(1) The name, address, and identification number of the generator of the waste;

(2) The quantity of waste accepted;

(3) All department of transportation required shipping information; and

(4) The date the waste is accepted;

c. The transporter carries this record when transporting waste to the reclamation facility; and

d. The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

9. Electronic manifest signatures shall meet the criteria described in 40 CFR 262.25.

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

33.1-24-04-05. Compliance with the manifest.

1. The transporter must deliver the entire quantity of hazardous waste which the transporter has accepted from a generator or a transporter to:

   a. The designated facility listed on the manifest;

   b. The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery;

   c. The next designated transporter; or

   d. The place outside the United States designated by the generator.

2. **Emergency condition.** If the hazardous waste cannot be delivered in accordance with subsection 1, because of an emergency condition other than rejection of the waste by the designated facility, or alternate designated facility,then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

   a. **Transporters without agency authority.** If the hazardous waste is not delivered to the next designated transporter in accordance with subdivision b of subsection 1, and the current transporter is without contractual authorization from the generator to act as the generator’s agent with respect to transport additions or substitutions, then the current transporter shall contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

      (1) The hazardous waste is not delivered in accordance with subdivision b of subsection 1 because of an emergency condition; or

      (2) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

      (3) The generator authorizes the revision.

   b. **Transporters with agency authority.** If the hazardous waste is not delivered to the next designated transporter in accordance with subdivision b of subsection 1, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior explicit approval, provided that:

(1) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(2) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: "Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf."; and

(3) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

c. Generator liability. The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under subdivision b of this subsection does not affect the generator's liability or responsibility for complying with any applicable requirement under this chapter, or grant any additional authority to the transporter to act on behalf of the generator.

3. If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

a. For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with section 33.1-24-04-06, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in subdivisions a through f of subsection 5 or subdivisions a through f of subsection 6 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16.

b. For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with section 33.1-24-04-06, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with subdivisions a through f of subsection 5 of section 33.1-24-05-39 or the applicable requirements of subsection 5 of section 33.1-24-06-16.

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

33.1-24-04-06. Recordkeeping.

1. A transporter of hazardous waste must keep a copy of the manifest signed by the transporter, the generator, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

2. For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all of the information required in subdivision b of subsection 5 of section 33.1-24-04-04 for a period of three years from the date the hazardous waste was accepted by the initial transporter.

3. For shipments of hazardous waste by rail within the United States:

   a. The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in subdivision b of subsection 6 of section 33.1-24-04-04 for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

   b. The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

4. A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

5. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

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

33.1-24-04-07. Immediate action.

1. In the event of a discharge of hazardous waste during transportation, the transporter must take appropriate immediate action to protect human health and the environment, e.g., notify local authorities and dike the discharge area.

2. If a discharge of hazardous waste occurs during transportation and an official of a state or local government or a federal agency, acting within the scope of official responsibilities, determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have identification numbers and without the preparation of a manifest.

3. An air, rail, highway, or water transporter who has discharged hazardous waste must:

   a. Give notice, if required by 49 CFR 171.15 to the national response center (800-424-8802 or 202-426-2675); and

   b. Report in writing as required by 49 CFR 171.16 to the director, office of hazardous materials regulations, materials transportation bureau, department of transportation, Washington, D.C. 20590.

4. A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

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

33.1-24-04-08. Discharge cleanup.

A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

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