CHAPTER 33.1-24-06
PERMITS

Section
33.1-24-06-01 Application for a Permit
33.1-24-06-02 Continuation of Expiring Permits
33.1-24-06-03 Signatories to Permit Applications and Reports
33.1-24-06-04 Conditions Applicable to Permits
33.1-24-06-05 Establishing Permit Conditions
33.1-24-06-06 Duration and Scope of Permits
33.1-24-06-07 Schedules of Compliance
33.1-24-06-08 Requirements for Recording and Reporting of Monitoring Results
33.1-24-06-09 Considerations Under Other State and Federal Laws
33.1-24-06-10 Effect of a Permit
33.1-24-06-11 Transfer of Permits
33.1-24-06-12 Modification or Revocation and Reissuance of Permits
33.1-24-06-13 Termination of Permits and Permit Denial
33.1-24-06-14 Permit Modification at the Request of the Permittee
33.1-24-06-15 Noncompliance and Program Reporting by the Department
33.1-24-06-16 Operating Status Prior to Final Administrative Disposition of the Permit Application
33.1-24-06-17 Contents of a Permit Application
33.1-24-06-18 Permits by Rule
33.1-24-06-19 Special Forms of Permits
33.1-24-06-20 Research, Development, and Demonstration Permits
33.1-24-06-21 Fees
33.1-24-06-22 [Reserved]
33.1-24-06-23 [Reserved]
33.1-24-06-24 [Reserved]
33.1-24-06-25 [Reserved]
33.1-24-06-26 [Reserved]
33.1-24-06-27 [Reserved]
33.1-24-06-28 [Reserved]
33.1-24-06-29 [Reserved]
33.1-24-06-30 Remedial Action Plans - General Information
33.1-24-06-31 Remedial Action Plan Application Process
33.1-24-06-32 Remedial Action Plan Approval Process
33.1-24-06-33 Modification, Revocation, and Reissuance or Termination of a Remedial Action Plan
33.1-24-06-34 Remedial Action Plan Operations
33.1-24-06-35 Remedial Action Plans for Offsite Locations
33.1-24-06-36 [Reserved]
33.1-24-06-37 [Reserved]
33.1-24-06-38 [Reserved]
33.1-24-06-39 [Reserved]
33.1-24-06-40 [Reserved]
33.1-24-06-41 [Reserved]
33.1-24-06-42 [Reserved]
33.1-24-06-43 [Reserved]
33.1-24-06-44 [Reserved]
33.1-24-06-45 Standardized Permit - General Information
33.1-24-06-46 [Reserved]
33.1-24-06-47 [Reserved]
33.1-24-06-48 Eligibility for a Standardized Permit
33.1-24-06-49 [Reserved]
33.1-24-06-50 [Reserved]

33.1-24-06-51 [Reserved]
33.1-24-06-52 Conditions Applicable to a Standardized Permit
33.1-24-06-53 [Reserved]
33.1-24-06-54 [Reserved]
33.1-24-06-55 [Reserved]
33.1-24-06-56 Standardized Permit Application Process
33.1-24-06-57 Standardized Permit Application
33.1-24-06-58 [Reserved]
33.1-24-06-59 [Reserved]
33.1-24-06-60 [Reserved]
33.1-24-06-61 [Reserved]
33.1-24-06-62 Certification Requirements
33.1-24-06-63 [Reserved]
33.1-24-06-64 [Reserved]
33.1-24-06-65 Recordkeeping Requirements
33.1-24-06-66 [Reserved]
33.1-24-06-67 [Reserved]
33.1-24-06-68 [Reserved]
33.1-24-06-69 [Reserved]
33.1-24-06-70 Information Required for Containers
33.1-24-06-71 [Reserved]
33.1-24-06-72 [Reserved]
33.1-24-06-73 Information Required for Tanks
33.1-24-06-74 [Reserved]
33.1-24-06-75 [Reserved]
33.1-24-06-76 Information Required for Equipment
33.1-24-06-77 [Reserved]
33.1-24-06-78 [Reserved]
33.1-24-06-79 [Reserved]
33.1-24-06-80 Information Required for Air Emissions Control
33.1-24-06-81 [Reserved]
33.1-24-06-82 [Reserved]
33.1-24-06-83 [Reserved]
33.1-24-06-84 [Reserved]
33.1-24-06-85 Permit Modification
33.1-24-06-86 [Reserved]
33.1-24-06-87 [Reserved]
33.1-24-06-88 [Reserved]
33.1-24-06-89 [Reserved]
33.1-24-06-90 [Reserved]
33.1-24-06-91 [Reserved]
33.1-24-06-92 [Reserved]
33.1-24-06-93 [Reserved]
33.1-24-06-94 [Reserved]
33.1-24-06-95 [Reserved]
33.1-24-06-96 [Reserved]
33.1-24-06-97 [Reserved]
33.1-24-06-98 [Reserved]
33.1-24-06-99 [Reserved]
33.1-24-06-100 Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers, and Hydrochloric Acid Production Furnaces to Minimize Emissions from Startup, Shutdown, and Malfunction Events

33.1-24-06-01. Application for a permit.

1. **Permit application.** Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the department as described in this section and section 33.1-24-06-17. Persons currently authorized with interim status shall apply for permits if required by the department. Persons covered by permits by rule (section 33.1-24-06-18) need not apply. Procedures for applications, issuance, and administration of emergency permits are found exclusively in section 33.1-24-06-19. Procedures for application, issuance, and administration of research, development, and demonstration permits are found exclusively in section 33.1-24-06-20. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivision a or subdivision b may be eligible for a standardized permit under sections 33.1-24-06-45 through 33.1-24-06-85. Procedures for application and issuance of standardized permits are found in 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.

   a. The facility generates hazardous waste and then nonthermally treats, or stores hazardous waste onsite in tanks, containers, or containment buildings; or

   b. The facility receives hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then stores, or nonthermally treats the hazardous waste in containers, tanks, or containment buildings.

2. **Who must have a permit?** North Dakota Century Code chapter 23.1-04 requires that a permit be obtained for the treatment, storage, or disposal of any hazardous waste as identified or listed in chapter 33.1-24-02. Treatment, storage, and disposal facilities that are otherwise subject to permitting and that meet the criteria in subdivisions a and b of subsection 1 of section 33.1-24-06-48, may be eligible for a standardized permit under sections 33.1-24-06-45 through 33.1-24-06-85. Owners and operators of hazardous waste management units shall have permits during the active life (including the closure period) of the unit, during any compliance period specified under section 33.1-24-05-53, including any extension of that period under subsection 3 of section 33.1-24-05-53. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure according to section 33.1-24-05-64 after January 26, 1983, shall have postclosure permits, unless they demonstrate closure by removal as provided under subdivisions d and e. If a postclosure permit is required, the permit must address applicable chapter 33.1-24-05 ground water monitoring, unsaturated zone monitoring, corrective action, and postclosure care. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a postclosure permit under this section.

   a. Specific inclusions. Hazardous waste permits are required for:

      (1) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste (see section 33.1-24-06-20). However, the owner or operator with an underground injection control permit is deemed to have a hazardous waste permit for the injection well itself if the owner or operator complies with requirements of subsection 1 of section 33.1-24-06-18.

      (2) Treatment, storage, or disposal of hazardous waste at facilities requiring a North Dakota pollutant discharge elimination system permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste is deemed to have a hazardous waste permit for that waste if the owner or operator complies with the requirements of subsection 2 of section 33.1-24-06-18.

   b. Specific exclusions. Hazardous waste permits are not required for:

(1) Generators who accumulate hazardous waste onsite in compliance with all of the conditions for exemption provided in sections 33.1-24-03-26, 33.1-24-03-28, and 33.1-24-03-29.

(2) Farmers who dispose of pesticide containers from their own use as provided in section 33.1-24-03-40.

(3) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulation by section 33.1-24-02-04 or 33.1-24-03-26.

(4) Owners or operators of totally enclosed treatment facilities as defined in section 33.1-24-01-04.

(5) Owners or operators of elementary neutralization units or wastewater treatment units as defined in section 33.1-24-01-04.

(6) Transporters storing 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.

(7) Persons mixing absorbent material and waste in a container, provided this mixing occurs at the time waste is first placed in the container, and the person complies with sections 33.1-24-05-90 and 33.1-24-05-91, and subsection 2 of section 33.1-24-05-08.

(8) Universal waste handlers and universal waste transporters as defined in section 33.1-24-01-04 managing the wastes listed below. These handlers are subject to regulation under 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.

(9) Immediate response activities.

(a) A person is not required to obtain a hazardous waste permit for treatment or containment activities taken during immediate response to any of the following situations:

[1] A discharge of a hazardous waste.

[2] An imminent and substantial threat of a discharge of hazardous waste.

[3] A discharge of a material which, if discharged, becomes a hazardous waste.

[4] An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in section 33.1-24-01-04.

(b) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this chapter for those activities.

(c) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed and its disposition.

(10) Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in subsection 11 of section 33.1-24-05-310. Reverse distributors are subject to regulation under sections 33.1-24-05-310 through 33.1-24-05-320 for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

c. Permits for less than an entire facility. The department may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

d. Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under chapter 33.1-24-05 standards shall obtain a postclosure permit unless they can demonstrate to the department that the closure met the standards for closure by removal or decontamination in section 33.1-24-05-122, subsection 5 of section 33.1-24-05-167, or section 33.1-24-05-135 respectively. The demonstration may be made in the following ways:

(1) If the owner or operator has submitted a part B application for a postclosure permit, the owner or operator may request a determination, based on information contained in the application, that chapter 33.1-24-05 closure by removal standards were met. If the department believes that chapter 33.1-24-05 standards were met, the department shall notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in subdivision e.

(2) If the owner or operator has not submitted a part B application for a postclosure permit, the owner or operator may petition the department for a determination that a postclosure permit is not required because the closure met the applicable chapter 33.1-24-05 closure standards.

(a) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under requirements that met or exceeded the chapter 33.1-24-05 closure by removal standard.

(b) The department shall approve or deny the petition according to the procedures outlined in subdivision e.

e. Procedures for closure equivalency determination.

(1) If a facility owner or operator seeks an equivalency demonstration under subdivision d, the department shall provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the

owner or operator within thirty days from the notice. In response to a request or at the department's own discretion, the department also shall hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the closure period. The department shall give public notice of the hearing at least thirty days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(2) The department shall determine whether the chapter 33.1-24-05 closure met the standards for closure by removal or decontamination in section 33.1-24-05-122, subsection 5 of section 33.1-24-05-167, or section 33.1-24-05-135 respectively within ninety days of its receipt. If the department finds that the closure did not meet the applicable chapter 33.1-24-05 standards, the department shall provide the owner or operator with a written statement of the reasons why the closure failed to meet chapter 33.1-24-05 standards. The owner or operator may submit additional information in support of an equivalency demonstration within thirty days after receiving such written statement. The department shall review any additional information submitted and make a final determination within sixty days.

(3) If the department determines that the facility did not close in accordance with chapter 33.1-24-05 closure by removal standards, the facility is subject to postclosure permitting requirements.

3. **Who applies?** If a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. However, the owner also shall sign the permit application.

4. **Completeness.** The department may not issue a permit before receiving a complete application for a permit, except for permits by rule, or emergency permits. An application for a permit is complete if the department receives an application form and any supplemental information which is completed to the department's satisfaction. The completeness of any application for a permit must be judged independently of the status of any other permit application or permit for the same facility or activity. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection 10. The department may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

5. **Information requirements.** All applicants for hazardous waste permits shall provide the information required by section 33.1-24-06-17 to the department.

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

7. **When to apply for a permit.**

a. Existing hazardous waste management facilities shall apply for a permit as follows:

(1) Owners and operators of existing hazardous waste management facilities shall submit part A of their permit application (see subsection 1 of section 33.1-24-06-17) to the department no later than whichever occurs first:

(a) Six months after the date of publication of rules which first require them to comply with the standards set forth in chapter 33.1-24-05; or

(b) Thirty days after the date they first become subject to the standards set forth in chapter 33.1-24-05.

(2) The department may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit part A of their permit application if it finds that:

(a) There has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application; and

(b) Such confusion is attributable to ambiguities in the department's rules in chapters 33.1-24-01 through 33.1-24-05.

(3) The department may extend the date by which the owner or operator of an existing hazardous waste management facility must submit part A of the permit application by compliance order.

(4) The owner and operator of an existing hazardous waste management facility may be required to submit part B of the permit application at any time. Any owner or operator must be allowed at least six months from the date of request to submit the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit an application at any time.

(5) Failure to furnish a requested permit application on time or to furnish in full the information required by the application is grounds for termination of the facility's operating status under the procedures of chapter 33.1-24-07.

b. New hazardous waste management facilities shall apply for a permit as follows:

(1) A person may not begin physical construction of a new hazardous waste management facility without having submitted a complete permit application (including both part A and part B) and having received a finally effective hazardous waste permit.

(2) An application for a permit for a new hazardous waste management facility (including both part A and part B) may be filed anytime after promulgation of those standards in sections 33.1-24-05-89, et seq., applicable to such facility. The application must be submitted to the department at least one hundred eighty days before physical construction is expected to commence.

8. **Updating permit applications.**

a. If any owner or operator of a hazardous waste management facility has filed part A of a permit application and has not yet filed part B, the owner or operator shall amend part A of the application with the department:

(1) No later than the effective date of regulatory provisions listing or designating wastes as hazardous, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(2) As necessary to comply with the provisions of section 33.1-24-06-16 for changes prior to the department making final administrative disposition of the application.

b. The owner or operator of a facility who fails to comply with the updating requirements of subdivision a is not authorized to treat, store, or dispose of those wastes not covered by a duly filed part A of the application.

9. **Reapplications.** Any hazardous waste management facility with an effective permit shall submit a new application at least one hundred eighty days before the expiration date of the effective permit unless permission for a later date has been granted by the department. The department shall not grant permission for applications to be submitted later than the expiration date of the existing permit. Any hazardous waste management facility with an effective permit and intending to be covered by a standardized permit, shall submit a notice of intent as described in subdivision a of subsection 4 of section 33.1-24-06-02, at least one hundred eighty days before the expiration date of the effective permit unless permission for a later date has been granted by the department. The department shall not grant permission for applications or notices of intent to be submitted later than the expiration date of the existing permit, except as allowed by subdivision b of subsection 4 of section 33.1-24-06-02.

10. **Exposure information.**

    a. Any permit part B applications submitted by an owner or an operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

        (1) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

        (2) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph 1; and

        (3) The potential magnitude and nature of the human exposure resulting from such releases.

    b. Owners and operators of a landfill or surface impoundment who have already submitted a part B application shall submit the exposure information required in subdivision a.

11. **General requirements.** The department may require a permittee or an applicant to submit information to establish permit conditions under subdivision b of subsection 2 of section 33.1-24-06-05 and subsection 1 of section 33.1-24-06-06.

12. If the department concludes, based on one or more of the factors listed in subdivision a that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the department shall require the additional information or assessments necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health or the environment, or both, resulting from both direct and indirect exposure pathways. The department may also require a permittee or applicant to provide information necessary to determine whether such assessments should be required.

    a. The department shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

        (1) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(2) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(3) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(4) Identities and quantities of other offsite sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(5) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(6) Volume and types of wastes, for example wastes containing highly toxic constituents;

(7) Other onsite sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(8) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(9) Such other factors as may be appropriate.

b. [Reserved].

History: Effective January 1, 2019; amended effective July 1, 2021; October 1, 2026.
General Authority: NDCC 23.1-04-03
Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-08

33.1-24-06-02. Continuation of expiring permits.

1. The conditions of an expired permit (including expired permits issued by the environmental protection agency) continue in force until the effective date of a new permit if:

   a. The permittee has submitted a timely application which is a complete application for a new permit; and

   b. The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impractical due to time or resource constraints).

2. Effect. Permits continued under this section remain fully effective and enforceable.

3. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any or all of the following:

   a. Initiate enforcement action based upon the permit which has been continued.

   b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit.

   c. Issue a new permit with appropriate conditions.

   d. Take other actions authorized by this article.

4. Standardized permits.

a. The conditions of an expired standardized permit continue in force until the effective date of a new permit (see section 33.1-24-07-11) if:

(1) The permittee has submitted a timely and complete notice of intent under subsection 2 of section 33.1-24-07-42 requesting coverage under a hazardous waste standardized permit; and

(2) The department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impractical due to time or resource constraints).

b. The department may notify the owner or operator that the facility is not eligible for a standardized permit (see section 33.1-24-07-46). The conditions of the expired permit will continue in force if the information specified in subdivision a of subsection 1 is submitted within sixty days after receipt of the notification that the facility is not eligible for a standardized permit.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-03. Signatories to permit applications and reports.

1. **Applications.** All hazardous waste permit applications must be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section a responsible corporate officer means:

(1) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation; or

(2) The manager of one or more manufacturing, production, or operating facilities employing more than two hundred fifty persons or having gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: The department does not require specific assignments or delegations of authority to responsible corporate officers identified in paragraph 1. The department will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the department to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under paragraph 2 rather than to specific individuals.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(1) The chief executive officer of the agency; or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. **Reports.** All reports required by permits, and other information requested by the department must be signed by a person described in subsection 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

   a. The authorization is made in writing by a person described in subsection 1;

   b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

   c. The written authorization is submitted to the department.

3. **Changes to authorization.** If an authorization under subsection 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection 2 must be submitted to the department prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. **Certification.**

   a. Any persons signing a document under subsection 1 or 2 shall make the following certification:

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

   b. For remedial action plans under sections 33.1-24-06-30 through 33.1-24-06-35, if the operator certifies according to subdivision a, then the owner may make the following certification instead of the certification in subdivision a:

      Based on my knowledge of the conditions of the property described in the remedial action plan and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-04-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-04-03, 23.1-04-05, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-04. Conditions applicable to permits.

The following conditions apply to all hazardous waste permits. All conditions applicable to permits must be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this article must be given in the permit.

1. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the North Dakota Century Code and is grounds for

enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. However, the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See section 33.1-24-06-19.)

2. **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

3. **Need to halt or reduce activity not a defense.** It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. **Duty to mitigate.** In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent any adverse impacts on human health or the environment.

5. **Proper operation and maintenance.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance include effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

6. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

7. **Property rights.** This permit does not convey any property rights of any sort or any exclusive privilege.

8. **Duty to provide information.** The permittee shall furnish to the department, within a reasonable time, any relevant information which the department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

9. **Inspection and entry.** The permittee shall allow the department, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

    a. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

    b. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

    c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

    d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized, any substances or parameters at any location.

10. **Monitoring and records.**

a. Samples and measurements taken for the purposes of monitoring must be representative of the monitored activity.

b. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by subdivision i of subsection 2 of section 33.1-24-05-40, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application. This period may be extended by the request of the department at any time.

c. Records of monitoring information must include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individuals who performed the sampling or measurements;

(3) The dates analyses were performed;

(4) The individuals who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. The permittee shall maintain records from all ground water monitoring wells and associated ground water surface elevations for the active life of the facility and, for disposal facilities, for the postclosure care period as well.

11. **Signatory requirement.** All applications, reports, or information submitted to the department must be signed and certified. (See section 33.1-24-06-03.)

12. **Reporting requirements.**

a. Planned changes. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. For a new hazardous waste management facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:

(1) The permittee has submitted to the department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2) Either of the following:

(a) The department has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(b) Within fifteen days of the date of submission of the letter in paragraph 1, the permittee has not received notice from the department of the department's intent to inspect. If so, prior inspection by the department is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

b. Anticipated noncompliance. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat,

store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in section 33.1-24-06-14, until:

(1) The permittee has submitted to the department by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2) Complied with the following:

(a) The department has inspected the modified or newly constructed facility and finds the modified or newly constructed facility is in compliance with the conditions of the permit; or

(b) Within fifteen days of the date of submission of the letter in paragraph 1, the permittee has not received notice from the department of the department's intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

c. Transfers. This permit is not transferable to any person except after notice to the department. The department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See section 33.1-24-06-11; in some cases, modification or revocation and reissuance is mandatory.)

d. Monitoring reports. Monitoring results must be reported at the intervals specified elsewhere in this permit.

e. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than fourteen days following each schedule date.

f. Twenty-four-hour reporting.

(1) The permittee shall report any noncompliance which may endanger health or the environment.

(2) Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which must be reported orally:

(a) Information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies; and

(b) Any information of a release or discharge of hazardous waste, or of a fire or explosion from a hazardous waste management facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause must include:

[1] Name, address, and telephone number of the owner or operator;

[2] Name, address, and telephone number of the facility;

[3] Date, time, and type of incident;

[4] Name and quantity of materials involved;

[5] The extent of injuries, if any;

[6] An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

[7] Estimated quantity and disposition of recovered material that resulted from the incident.

(3) A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(4) The department may waive the five-day written notice requirement in favor of a written report within fifteen days.

g. Other noncompliance. The permittee shall report all instances of noncompliance not reported under subdivisions a, d, e, and f, at the time monitoring reports are submitted. The reports must contain the information listed in subdivision f.

h. Manifest discrepancy reports. If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee shall submit a letter report, including a copy of the manifest to the department.

i. Unmanifested waste report. An unmanifested waste report must be submitted to the department within fifteen days of receipt of unmanifested waste.

j. Biennial report. A biennial report must be submitted covering facility activities during odd-numbered calendar years.

k. Other information. Where the permittee becomes aware that the permittee failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, the permittee shall promptly submit such facts or information.

13. **Information repository.** The department may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in subsection 2 of section 33.1-24-07-27. The information repository will be governed by the provisions of subsections 3 through 6 of section 33.1-24-07-27.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-05. Establishing permit conditions.

1. In addition to conditions required in all permits (section 33.1-24-06-04), the department shall establish conditions in permits, as required on a case-by-case basis, under section 33.1-24-06-06 (duration of permits), subsection 1 of section 33.1-24-06-07 (schedules of compliance), and section 33.1-24-06-08 (monitoring).

2. Additional permit conditions.

a. Each hazardous waste permit shall include permit conditions necessary to achieve compliance with North Dakota Century Code chapter 23.1-04 and rules, including each of the applicable requirements specified in chapter 33.1-24-05. In satisfying this provision,

the department may incorporate applicable requirements of chapter 33.1-24-05 directly into the permit or establish other permit conditions that are based on this chapter.

b. Each permit issued shall contain terms and conditions as the department determines necessary to protect human health and the environment.

c. If, as the result of assessments of other information, the department determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, chapter 33.1-24-05 to ensure protection of human health and the environment, the department shall include those terms and conditions in a hazardous waste permit for a hazardous waste combustion unit.

3. An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in section 33.1-24-06-12.

4. New or reissued permits, and to the extent allowed under section 33.1-24-06-12, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section and in section 33.1-24-06-08.

5. All permit conditions must be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-06. Duration and scope of permits.

1. Hazardous waste permits are effective for a fixed term of five years. Every five years permits must be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of North Dakota Century Code sections 23.1-04-05 and 23.1-04-08, and take into account improvements in technology as well as applicable rules.

2. Except as provided in section 33.1-24-06-02, the term of a permit may not be extended by modification beyond the maximum duration specified in this section.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-07. Schedules of compliance.

1. The permit may, when appropriate, specify a schedule of compliance leading to compliance with North Dakota Century Code chapter 23.1-04 and its regulations.

a. Time for compliance. Any schedules of compliance under this section must require compliance as soon as possible.

b. Interim dates. Except as provided in paragraph 2 of subdivision a of subsection 2, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule must set forth interim requirements and the dates for their achievement.

(1) The time between interim dates may not exceed one year.

(2) If the time necessary for completion of any interim requirements (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit must specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

c. Reporting. The permit must be written to require that no later than fourteen days following each interim date and the final date of compliance, the permittee shall notify the department in writing of the permittee's compliance or noncompliance with the interim or final requirements.

2. Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities [by receiving a terminal volume of hazardous waste and closing (and conducting postclosure care, where applicable) pursuant to applicable requirements] rather than continue to operate and meet permit requirements as follows:

a. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

b. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit must contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

c. If the permittee is undecided whether to cease conducting regulated activities, the department may issue or modify a permit to contain two schedules as follows:

(1) Both schedules must contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities.

(2) One schedule must lead to timely compliance with applicable requirements.

(3) The second schedule must lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.

(4) Each permit containing two schedules must require that after the permittee has made a final decision under paragraph 1 the permittee shall (a): follow the schedule leading to compliance if the decision is to continue conducting regulated activities; or (b): follow the schedule leading to termination if the decision is to cease conducting regulated activities.

d. The applicant's or permittee's decision to cease conducting regulated activities must be evidenced by a firm public commitment satisfactory to the department such as a resolution of the board of directors of a corporation.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-08. Requirements for recording and reporting of monitoring results.

All permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in chapter 33.1-24-05. Reporting must be no less frequent than specified in that 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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-09. Considerations under other state and federal laws.

Permits must be issued in a manner and must contain conditions consistent with requirements of other applicable laws of this state and the federal government.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-10. Effect of a permit.

1. Compliance with a hazardous waste permit.

    a. Compliance with a hazardous waste permit during its term constitutes compliance, for purposes of enforcement, with North Dakota Century Code chapter 23.1-04 except for those requirements not included in the permit which:

        (1) Become effective by statute;

        (2) Are promulgated under sections 33.1-24-05-250 through 33.1-24-05-299 restricting the placement of hazardous wastes in or on the land;

        (3) Are promulgated under 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 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance (CQA) programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of section 33.1-24-06-14 class 1 permit modifications; or

        (4) Are promulgated under subparts AA, BB, or CC of 40 CFR part 265 limiting air emissions, as incorporated by reference in subsection 5 of section 33.1-24-06-16.

    b. A permit may be modified, revoked and reissued, or terminated during the permit's term for cause as set forth in sections 33.1-24-06-12 and subsection 1 of section 33.1-24-06-13, or the permit may be modified upon the request of the permittee as set forth in section 33.1-24-06-14.

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

3. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-11. Transfer of permits.

1. A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under subsection 2 or subdivision b of subsection 2 of section 33.1-24-06-12) to identify the new permittee and incorporate such other requirements as may be necessary.

2. Changes in the ownership or operational control of a facility may be made as a class 1 modification with prior written approval of the department in accordance with section 33.1-24-06-14 or as a routine change with prior approval under section 33.1-24-07-53. The new owner or operator must submit a revised permit application no later than ninety days prior to a scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the department. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of sections 33.1-24-05-74 through 33.1-24-05-88 (financial requirements) until the new owner or operator has demonstrated that the owner or operator is complying with the requirements of those sections. The new owner or operator must demonstrate compliance with sections 33.1-24-05-74 through 33.1-24-05-88 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with sections 33.1-24-05-74 through 33.1-24-05-88, the department shall notify the old owner or operator that the owner or operator no longer needs to comply with sections 33.1-24-05-74 through 33.1-24-05-88 as of the date of demonstration.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-12. Modification or revocation and reissuance of permits.

When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see section 33.1-24-06-04), receives a request for revocation and reissuance under section 33.1-24-07-03 or conducts a review of the permit file), the department may determine whether one or more of the causes listed in subsections 1 and 2 for modification, or revocation and reissuance, or both, exist. If cause exists, the department may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection 3, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see section 33.1-24-07-03). If cause does not exist under this section, the department may not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the department shall approve or deny the request according to the procedures of section 33.1-24-06-14, or section 33.1-24-06-85 and sections 33.1-24-07-40 through 33.1-24-07-54. Otherwise, a draft permit must be prepared and other procedures in chapter 33.1-24-07 followed.

1. **Causes for modifications.** The following are causes for modification, but not revocation and reissuance of permits. However, the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:

   a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

   b. Information. The department has received information that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.

   c. New statutory requirements or regulations. The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued.

   d. Compliance schedules. The department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

   e. Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the department when it comes up for reissuance in accordance with section 33.1-24-06-06, the department shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in chapters 33.1-24-01 through 33.1-24-07.

2. **Causes for modification or revocation and reissuance.** The following are causes to modify or, alternatively, revoke and reissue a permit:

   a. Cause exists for termination under section 33.1-24-06-13, and the department determines that modification or revocation and reissuance is appropriate.

   b. The department has received notification (as required in the permit, see subsection 4 of section 33.1-24-06-14) of a proposed transfer of the permit.

   c. The department has received notification under subsection 2 of section 33.1-24-07-42 of a facility owner's or operator's intent to be covered by a standardized permit.

3. **Facility siting.** Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-13. Termination of permits and permit denial.

1. **Termination of permits.**

   a. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

      (1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant factors or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

b. The department shall follow the applicable procedures in chapter 33.1-24-07 in terminating any permit under this section.

2. **Permit denial.** The department may, pursuant to the procedures in chapter 33.1-24-07, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-14. Permit modification at the request of the permittee.

1. **Class 1 modifications.**

a. Except as provided in subdivision b, the permittee may put into effect class 1 modifications listed in appendix I of this section under the following conditions:

(1) The permittee must notify the department concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notice must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notice, the permittee must provide applicable information required by section 33.1-24-06-17 and subsections 2 and 3 of section 33.1-24-06-19.

(2) The permittee must send a notice of the modification to all persons on the facility mailing list, maintained by the department in accordance with chapter 33.1-24-07, and the appropriate units of state and local governments, as specified in section 33.1-24-07-06. This notification must be made within ninety calendar days after the change is put into effect. For the class 1 modifications that require prior department approval, the notification must be made within ninety calendar days after the department approves the request.

(3) Any person may request the department to review, and the department may for cause reject, any class 1 modification. The department must inform the permittee by certified mail that a class 1 modification has been rejected, explaining the reasons for the rejection. If a class 1 modification has been rejected, the permittee must comply with the original permit conditions.

b. Class 1 permit modifications identified in appendix I by an asterisk may be made only with the prior written approval of the department.

c. For a class 1 permit modification, the permittee may elect to follow the procedures in subsection 2 of section 33.1-24-06-14 for class 2 modifications instead of the class 1 procedures. The permittee must inform the department of this decision in the notice required in subdivision a of subsection 2 of section 33.1-24-06-14.

2. **Class 2 modifications.**

a. For class 2 modifications listed in appendix I of this section, the permittee must submit a modification request to the department that:

(1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(2) Identifies that the modification is a class 2 modification;

(3) Explains why the modification is needed; and

(4) Provides the applicable information required by section 33.1-24-06-17 and subsections 2 and 3 of section 33.1-24-06-19.

b. The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the department and to the appropriate units of state and local government as specified in section 33.1-24-07-06 and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the department evidence of the mailing and publication. The notice must include:

(1) Announcement of a sixty-day comment period, in accordance with subdivision e of subsection 2 of section 33.1-24-06-14, and the name and address of a department contact to whom comments must be sent;

(2) Announcement of the date, time, and place for a public meeting held in accordance with subdivision d of subsection 2 of section 33.1-24-06-14;

(3) Name and telephone number of the permittee's contact person;

(4) Name and telephone number of a department contact person;

(5) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(6) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the department contact person."

c. The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

d. The permittee must hold a public meeting no earlier than fifteen days after the publication of the notice required in subdivision b and no later than fifteen days before the close of the sixty-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

e. The public must be provided sixty days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department contact identified in the public notice.

f. Notification request.

(1) No later than ninety days after receipt of the notification request, the department must:

(a) Approve the modification request, with or without changes, and modify the permit accordingly;

(b) Deny the request;

(c) Determine that the modification request must follow the procedures in subsection 3 of section 33.1-24-06-14 for class 3 modifications for the following reasons:

[1] There is significant public concern about the proposed modification; or

[2] The complex nature of the change requires the more extensive procedures of class 3;

(d) Approve the request, with or without changes, as a temporary authorization having a term of up to one hundred eighty days; or

(e) Notify the permittee that the department will decide on the request within the next thirty days.

(2) If the department notifies the permittee of a thirty-day extension for a decision, the department must, no later than one hundred twenty days after receipt of the modification request:

(a) Approve the modification request with or without changes, and modify the permit accordingly;

(b) Deny the request; or

(c) Determine that the modification request must follow the procedures in subsection 3 of section 33.1-24-06-14 for class 3 modifications for the following reasons:

[1] There is significant public concern about the proposed modification; or

[2] The complex nature of the change requires the more extensive procedures of class 3.

(d) Approve the request, with or without changes, as a temporary authorization having a term of up to one hundred eighty days.

(3) If the department fails to make one of the decisions specified in paragraph 2 by the one hundred twentieth day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to one hundred eighty days, without formal department action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of section 33.1-24-06-16. If the department approves, with or without changes, or denies the modification request during the term of the temporary or automatic authorization provided for in paragraph 1, 2, or 3, such action cancels the temporary or automatic authorization.

(4) The following applies:

(a) In the case of an automatic authorization under paragraph 3, or a temporary authorization under subparagraph d of paragraph 1 or subparagraph d of paragraph 2, if the department has not made a final approval or denial of the modification request by the date fifty days prior to the end of the temporary or automatic authorization, the permittee must, within seven days of that time, send a notification to persons on the facility mailing list, and make a

reasonable effort to notify other persons who submitted written comments on the modification request, that:

[1] The permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

[2] Unless the department acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(b) If the owner or operator fails to notify the public by the date specified in subparagraph a of paragraph 4, the effective date of the permanent authorization will be deferred until fifty days after the owner or operator notifies the public.

(5) Except as provided in paragraph 7, if the department does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as a class 3, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless modified later under section 33.1-24-06-12 or 33.1-24-06-14. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of section 33.1-24-06-16.

(6) In making a decision to approve or deny a modification request including a decision to issue a temporary authorization or to reclassify a modification as a class 3, the department must consider all written comments submitted to the department during the public comment period and must respond in writing to all significant comments in the department's decision.

(7) With the written consent of the permittee, the department may extend, indefinitely or for a specified period, the time periods for final approval or denial of a modification request or for reclassifying a modification as a class 3.

g. The department may deny or change the terms of a class 2 permit modification request under paragraphs 1 through 3 of subdivision f for the following reasons:

(1) Modification request is incomplete;

(2) The requested modification does not comply with the appropriate requirements of chapter 33.1-24-05 or other applicable requirements; or

(3) The conditions of the modification fail to protect human health and the environment.

h. The permittee may perform any construction associated with a class 2 permit modification request beginning sixty days after the submission of the request unless the department establishes a later date for commencing construction and informs the permittee in writing before day sixty.

3. **Class 3 modifications.**

a. For class 3 modifications listed in appendix I of this section, the permittee must submit a modification request to the department that:

(1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(2) Identifies that the modification is a class 3 modification;

(3) Explains why the modification is needed; and

(4) Provides the applicable information required by section 33.1-24-06-17 and subsections 2, 3, and 4 of section 33.1-24-06-19.

b. The permittee must send a notice of the modification request to all persons on the facility mailing list maintained by the department and to the appropriate units of state and local government as specified in section 33.1-24-07-06 and must publish this notice in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the department evidence of the mailing and publication. The notice must include:

(1) Announcement of a sixty-day comment period, and a name and address of a department contact to whom comments must be sent;

(2) Announcement of the date, time, and place for a public meeting on the modification request, in accordance with subdivision d of subsection 3 of section 33.1-24-06-14;

(3) Name and telephone number of the permittee's contact person;

(4) Name and telephone number of a department contact person;

(5) Location where copies of the modification request and any supporting documents can be viewed and copied; and

(6) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the department contact person."

c. The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

d. The permittee must hold a public meeting no earlier than fifteen days after the publication of the notice required in subdivision b and no later than fifteen days before the close of the sixty-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

e. The public must be provided at least sixty days to comment on modification requests. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department contact identified in the notice.

f. After the conclusion of the sixty-day comment period, the department must grant or deny the permit modification request according to the permit modification procedures of chapter 33.1-24-07. In addition, the department must consider and respond to all significant written comments received during the sixty-day comment period.

4. **Other modifications.**

a. In the case of modifications not explicitly listed in appendix I of this section, the permittee may submit a class 3 modification request to the department, or the permittee may request a determination by the department that the modification should be reviewed and approved as a class 1 or class 2 modification. If the permittee requests that the modification be classified as a class 1 or 2 modification, the permittee must provide the department with the necessary information to support the requested classification.

b. The department shall make the determination described in subdivision a as promptly as practicable. In determining the appropriate class for a specific modification, the department shall consider the similarity of the modification to other modifications codified in appendix I and the following criteria:

(1) Class 1 modifications apply to minor changes to keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of class 1 modifications, the department may require prior approval.

(2) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(a) Common variations in the types and quantities of the wastes managed under the facility permit;

(b) Technological advancement; and

(c) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(3) Class 3 modifications substantially alter the facility or its operation.

5. **Temporary authorizations.**

a. Upon request of the permittee, the department may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this section. Temporary authorizations must have a term of not more than one hundred eighty days.

b. Temporary authorizations.

(1) The permittee may request a temporary authorization for:

(a) Any class 2 modification meeting the criteria of paragraph 2 of subdivision c; and

(b) Any class 3 modification that meets the criteria in subparagraph a or b of paragraph 2 of subdivision c; or that meets the criteria in subparagraphs c through e of paragraph 2 of subdivision c and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(2) The temporary authorization request must include:

(a) A description of the activities to be conducted under the temporary authorization;

(b) An explanation of why the temporary authorization is necessary; and

(c) Sufficient information to ensure compliance with chapter 33.1-24-05 standards.

(3) The permittee must send a notice about the temporary authorization request to all persons on the facility mailing list maintained by the department and to appropriate units of state and local governments as specified in section 33.1-24-07-06. This notification must be made within seven days of submission of the authorization request.

c. The department shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the department must find:

(1) The authorized activities are in compliance with the standards of chapter 33.1-24-05.

(2) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(a) To facilitate timely implementation of closure or corrective action activities;

(b) To allow treatment or storage in tanks or containers, or in containment buildings, in accordance with sections 33.1-24-05-250 through 33.1-24-05-299;

(c) To prevent disruption of ongoing waste management activities;

(d) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(e) To facilitate other changes to protect human health and the environment.

d. A temporary authorization may be issued for one additional term of up to one hundred eighty days provided that the permittee has requested a class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(1) The reissued temporary authorization constitutes the department's decision on a class 2 permit modification in accordance with subparagraph d of paragraph 1 of subdivision f of subsection 2 or subparagraph d of paragraph 2 of subdivision f of subsection 2; or

(2) The department determines that the reissued temporary authorization involving a class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection 3 are conducted.

6. **Public notice and appeals of permit modification decisions.**

a. The department shall notify persons on the facility mailing list and appropriate units of state and local government within ten days of any decision under this section to grant or deny a class 2 or 3 permit modification request. The department shall also notify such persons within ten days after an automatic authorization for a class 2 modification goes into effect under paragraph 3 or 5 of subdivision f of subsection 2.

b. The department's decision to grant or deny a class 2 or 3 permit modification request under this section may be appealed under the permit appeal procedures of section 33.1-24-07-14.

c. An automatic authorization that goes into effect under paragraph 3 or 5 of subdivision f of subsection 2 may be appealed under the permit appeal procedure of section 33.1-24-07-14; however, the permittee may continue to conduct the activities pursuant to the automatic authorization until the appeal has been granted pursuant to subsection 3 of section 33.1-24-07-14, notwithstanding the provisions of subsection 2 of section 33.1-24-07-11.

7. **Newly regulated wastes and units.**

a. The permittee is authorized to continue to manage wastes listed or identified as hazardous under chapter 33.1-24-02 or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(1) The unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit of the effective date of the final rule listing or identifying the waste, or regulating the unit;

(2) The permittee submits a class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(3) The permittee is in compliance with the applicable standards of subsection 5 of section 33.1-24-06-16 and sections 33.1-24-05-191 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, and 33.1-24-05-820 through 33.1-24-05-929;

(4) The permittee also submits a complete class 2 or 3 modification request within one hundred eighty days of the effective date of the rule listing or identifying the waste or subjecting the unit to hazardous waste management standards; and

(5) In the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable ground water monitoring and financial responsibility requirements in subsection 5 of section 33.1-24-06-16 on the date twelve months after the effective date of the rule identifying or listing the waste as hazardous or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, the owner or operator will lose authority to operate under this subsection.

b. New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the twenty-five percent capacity expansion limit for class 2 modifications.

8. **Military hazardous waste munitions treatment and disposal.** The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting offsite wastes, if:

a. The facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject to hazardous waste regulatory requirements;

b. On or before the date when the waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a class 1 modification request to remove or amend the permit provision restricting the receipt of offsite waste munitions; and

c. The permittee submits a complete class 2 modification request within one hundred eighty days of the date when the waste military munitions became subject to hazardous waste regulatory requirements.

9. **Permit modification list.** The department must maintain a list of all approved permit modifications and must publish a notice once a year in a statewide newspaper that an updated list is available for review.

10. **Combustion facility changes to meet 40 CFR part 63 maximum achievable control technology standards.** The following procedures apply to hazardous waste combustion facility permit modifications requested under appendix I to this section, section L(9).

a. Facility owners or operators must have complied with the notification of intent to comply requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000 (see 40 CFR part 63 sections 63.1200 through 63.1499 revised as of July 1, 2000) in order to

request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.

b. Facility owners or operators must comply with the notification of intent to comply requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

c. If the department does not approve or deny the requests within ninety days of receiving it, the request shall be deemed approved. The department may, at the department's discretion, extend this ninety-day deadline one time for up to thirty days by notifying the facility owner or operator.

11. Waiver of hazardous waste permit conditions in support of transition to the 40 CFR part 63 maximum achievable control technology standards.

a. The owner or operator may request to have specific hazardous waste operating and emissions limits waived by submitting a class 1 permit modification request under appendix I of this section, section L(10). The owner or operator must:

(1) Identify the specific hazardous waste permit operating and emissions limits which the owner or operator is requesting to waive;

(2) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the hazardous waste permit and maximum achievable control technology compliance; and

(3) Discuss how the revised provisions will be sufficiently protective.

(4) The department shall approve or deny the request within thirty days of receipt of the request. The department may, at the department's discretion, extend this thirty-day deadline one time for up to thirty days by notifying the facility owner or operator.

b. To request this modification in conjunction with maximum achievable control technology performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(I) and (ii), for an aggregate time not to exceed seven hundred twenty hours of operation (renewable at the discretion of the department) the owner or operator must:

(1) Submit the modification request to the department at the same time the owner or operator submits the owner's or operator's test plans to the department; and

(2) The department may elect to approve or deny the request contingent upon approval of the test plans.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-15. Noncompliance and program reporting by the department.

The department shall submit any reports required under this section to the environmental protection agency regional administrator. For purposes of this section only, hazardous waste permittees includes facilities with operating status defined by subsection 5 of section 33.1-24-06-16, when appropriate.

1. **Quarterly reports.** The department shall submit quarterly narrative reports for major facilities as follows:

   a. Format. The report must use the following format:

      (1) An alphabetized list by permittee name. When two or more permittees have the same name, the lowest permit number must be entered first.

      (2) For each entry on a list, include the following information in the following order:

         (a) Name, location, and permit number of the noncomplying permittee.

         (b) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in subdivision b.

         (c) The dates and a brief description of the actions taken by the department to ensure compliance.

         (d) Status of the instances of noncompliance with the date of the review of the status or the date of resolution.

         (e) Any details which tend to explain or mitigate the instances of noncompliance.

   b. Instances of noncompliance to be reported. Any instances of noncompliance within the following categories must be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved, it need not appear in subsequent reports.

      (1) Failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (e.g., award of a contract, preliminary plans), or a construction step (e.g., begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the requirement of the schedule within thirty days from the date a compliance schedule is due under the permit.

      (2) Modifications to schedules of compliance. When a schedule of compliance in the permit has been modified under section 33.1-24-06-12 or 33.1-24-06-14 because of the permittee's noncompliance.

      (3) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit compliance schedule (e.g., progress report or notice of noncompliance or compliance), or a monitoring report; and the permittee has not submitted the complete report within thirty days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

      (4) Deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the department and thus impede the review of the status of compliance.

      (5) Noncompliance with other permit requirements. Noncompliance must be reported in the following circumstances:

(a) Whenever the permittee has violated a permit requirement (other than reported under paragraph 1 or 2), and has not returned to compliance within forty-five days from the date reporting of noncompliance was due under the permit; or

(b) When the department determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(c) When the department determines significant permit noncompliance or other significant event has occurred, such as a fire or explosion or migration of fluids into an underground source of drinking water.

(6) All other. Statistical information must be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under this subsection.

c. The department shall submit, in a manner and form prescribed by the regional administrator, quarterly reports concerning noncompliance by transporters (e.g., recordkeeping requirements), and by generators that send their wastes to offsite treatment, storage, or disposal facilities.

2. **Annual reports.**

a. Annual noncompliance report. The department shall submit statistical reports on nonmajor hazardous waste management permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information must be organized to follow the types of noncompliance listed in subsection 1.

b. In addition to the annual noncompliance report, the department shall prepare a "program report" which contains information (in a manner and form prescribed by the regional administrator) on generators and transporters, and the permit status of regulated facilities. The department shall include on a biennial basis summary information on the quantities and types of hazardous waste generated, transported, stored, treated, and disposed during the preceding odd-numbered year. This summary information must be reported in a manner and form prescribed by the regional administrator and according to environmental protection agency characteristics and lists of hazardous wastes at 40 CFR part 261.

3. **Schedule.**

a. For all quarterly reports, on the last working day of May, August, November, and February, the department shall submit to the regional administrator information concerning noncompliance with the hazardous waste management requirements in this state in accordance with the following schedule (Reports must also be made available to the public for inspection and copying on this date):

January, February, and March	May 31
April, May, and June	August 31
July, August, and September	November 30
October, November, and December	February 28

b. For annual reports, the period shall be for one calendar year ending December thirty-first, with reports completed and available to the public no more than sixty days later.

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

33.1-24-06-16. Operating status prior to the final administrative disposition of the permit application.

1. [Reserved].

2. [Reserved].

3. [Reserved].

4. [Reserved].

5. During operating status prior to final administrative disposition of the permit application, owners or operators shall comply with the federal interim status standards, 40 CFR part 265 and subpart G of part 270, effective February 7, 2020.

6. Operating status prior to final administrative disposition of the permit application terminates when:

   a. Final administrative disposition of a permit application, except an application for a remedial action plan under sections 33.1-24-06-30 through 33.1-24-06-35, is made; or

   b. Operating status prior to final administrative disposition of the permit application is terminated as provided in paragraph 5 of subdivision a of subsection 7 of section 33.1-24-06-01.

7. Operating status prior to final administrative disposition of a permit application does not apply to any facility which has been previously denied a hazardous waste permit or if authority to operate the facility under article 33.1-24 has been previously terminated.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-17. Contents of a permit application.

1. Part A of the application must include the following information:

   a. The activities conducted by the applicant which require it to obtain a hazardous waste permit.

   b. Name, mailing address, and location of the facility for which the application is submitted.

   c. Up to four standard industrial codes which best reflect the principal products or services provided by the facility.

   d. The operator's name, address, telephone number, ownership status and status as a federal, state, private, public, or other entity.

   e. A listing of all permits or construction approvals at all governmental levels received or applied for under any of the following programs:

(1) Hazardous waste management program under the Resource Conservation and Recovery Act.

(2) Underground injection control program under the Safe Drinking Water Act.

(3) North Dakota pollutant discharge elimination system program under the Clean Water Act.

(4) Prevention of significant deterioration program under the Clean Air Act.

(5) Nonattainment program under the Clean Air Act.

(6) National emissions standards for hazardous air pollutants preconstruction approval under the Clean Air Act.

(7) Dredge or fill permits under section 404 of the Clean Water Act.

(8) Other relevant environmental permits.

f. A topographic map (or other map if a topographic map is unavailable), extending one mile [1.61 kilometers] beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

g. A brief description of the nature of the business.

h. The latitude and longitude of the facility.

i. The name, address, and telephone number of the owner of the facility.

j. An indication of whether the facility is new or existing and whether it is a first or revised application.

k. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas.

l. For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and types of future treatment, storage, and disposal areas.

m. A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

n. A specification of the hazardous wastes listed or designated under chapter 33.1-24-02 to be treated, stored, or disposed at the facility; an estimate of the quantity of such waste to be treated, stored, or disposed annually; and a general description of the processes to be used for such wastes.

o. For hazardous debris, a description of the debris categories and contaminant categories to be treated, stored, or disposed of at the facility.

2. The information requirements for part B of the permit application presented below reflect the standards in chapter 33.1-24-05. These information requirements are necessary in order for the department to determine compliance with chapter 33.1-24-05 standards. If owners and operators of hazardous waste management facilities can demonstrate that the information required for part B of the application cannot be provided to the extent required, the department

may make allowances for submission of such information on a case-by-case basis. Information required for part B of the application must be submitted to the department and signed in accordance with requirements in section 33.1-24-06-03. Certain technical data, such as design drawings and specifications, and engineering studies must be certified by a qualified professional engineer. Part B of the application includes the following (information in subdivisions a through r is required for all hazardous waste management facilities except as section 33.1-24-05-01 provides otherwise; that in subdivisions s through y and hh is additional information required for specific types of facilities; and that in subdivisions z through gg is additional information regarding protection of ground water, and is required for surface impoundments, piles, land treatment units, and landfills, except as otherwise provided in subsection 2 of section 33.1-24-05-47):

a. General description of the facility.

b. Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses must contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with chapter 33.1-24-05.

c. A copy of the waste analysis plan required by subsection 2 of section 33.1-24-05-04 and, if applicable, subsection 3 of section 33.1-24-05-04.

d. A description of the security procedures and equipment required by section 33.1-24-05-05, or a justification demonstrating the reason for requesting a waiver of this requirement.

e. A copy of the general inspection schedule required by subsection 2 of section 33.1-24-05-06; include, where applicable, as part of the inspection schedule, specific requirements in section 33.1-24-05-93, subsection 9 of section 33.1-24-05-106, sections 33.1-24-05-108, 33.1-24-05-120, 33.1-24-05-132, 33.1-24-05-163, 33.1-24-05-178, 33.1-24-05-302, 33.1-24-05-403, 33.1-24-05-422, 33.1-24-05-423, 33.1-24-05-428, 33.1-24-05-454, 33.1-24-05-455, 33.1-24-05-456, and 33.1-24-05-458.

f. A justification of any request for waivers of the preparedness and prevention requirements of sections 33.1-24-05-15 through 33.1-24-05-25.

g. A copy of the contingency plan required by sections 33.1-24-05-26 through 33.1-24-05-36. Include, where applicable, as part of the contingency plan, specific requirements in sections 33.1-24-05-98 and 33.1-24-05-121.

h. A description of procedures, structures, or equipment used at the facility to:

   (1) Prevent hazards in unloading operations, for example, ramps and special forklifts;

   (2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, for example, berms, dikes, and trenches;

   (3) Prevent contamination of water supplies;

   (4) Mitigate effects of equipment failure and power outages;

   (5) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

   (6) Prevent releases to atmosphere.

i. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with section 33.1-24-05-08, including documentation demonstrating compliance with subsection 3 of section 33.1-24-05-08.

j. Traffic pattern, estimated volume (number, type of vehicles) and control, for example, show turns across traffic lanes and stacking lanes, if appropriate; describe access road, surfacing and load-bearing capacity; show traffic control signals.

k. [Reserved].

l. An outline of both the introductory and continuing programs by owners or operators to prepare persons to operate and maintain a hazardous waste management facility in a safe manner as required to demonstrate compliance with section 33.1-24-05-07. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in subdivision c of subsection 1 of section 33.1-24-05-07.

m. A copy of the closure plan and where applicable, the postclosure plan required by sections 33.1-24-05-61, 33.1-24-05-67, and 33.1-24-05-110. Include, where applicable, as part of the plans, specific requirements in sections 33.1-24-05-97, 33.1-24-05-110, 33.1-24-05-122, 33.1-24-05-135, 33.1-24-05-151, 33.1-24-05-167, 33.1-24-05-180, 33.1-24-05-301, and 33.1-24-05-303.

n. For hazardous waste disposal units that have been closed, documentation that notices required under section 33.1-24-05-68 have been filed.

o. The most recent closure and, where applicable, postclosure cost estimate for the facility prepared in accordance with section 33.1-24-05-76 and a copy of the documentation required to demonstrate financial assurance under section 33.1-24-05-77. For a new facility, a copy of the required documentation may be submitted sixty days prior to the initial receipt of hazardous waste, if that is later than the submission of the part B application.

p. Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of section 33.1-24-05-79. For a new facility, documentation showing the amount of insurance meeting the specification of subsection 1, and subsection 2, if applicable, of section 33.1-24-05-79, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in subsection 3 of section 33.1-24-05-79.

q. A topographic map showing a distance of one thousand feet [304.8 meters] around the facility at a scale of two and five-tenths centimeters [1 inch] equal to not more than sixty-one meters [200 feet]. (The department may allow the use of other scales on a case-by-case basis.) Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of one and five-tenths meters [5 feet], if relief is greater than six and one-tenth meters [20 feet], or an interval of six-tenths meter [2 feet], if relief is less than six and one-tenth meters [20 feet]. Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of the facilities. The map must clearly show the following:

(1) Map scale and date.

(2) One hundred-year floodplain area.

(3) Surface waters including intermittent streams.

(4) Surrounding land uses (residential, commercial, agricultural, recreational).

(5) A wind rose, for example, prevailing wind speed and direction.

(6) Orientation of the map (north arrow).

(7) Legal boundaries of the hazardous waste management facility site.

(8) Access control (fences, gates).

(9) Injection and withdrawal wells, both onsite and offsite.

(10) Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and processed sewerage systems, loading and unloading areas, fire control facilities, etc.).

(11) Barriers for drainage or flood control.

(12) Location of operational units within the hazardous waste management facility site, where hazardous waste is (or will be) treated, stored, or disposed (include equipment cleanup areas).

r. Applicants may be required to submit such information as may be necessary to enable the department to carry out the department's duties under federal or other state laws as required in section 33.1-24-06-09.

s. For facilities that store containers of hazardous waste, except as otherwise provided in section 33.1-24-05-89:

(1) A description of the containment system to demonstrate compliance with section 33.1-24-05-94. Show at least the following:

(a) Basic design parameters, dimensions, and materials of construction.

(b) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(c) Capacity of the containment system relative to the number and volume of containers to be stored.

(d) Provisions for preventing or managing run-on.

(e) How accumulated liquids can be analyzed and removed to prevent overflow.

(2) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with subsection 3 of section 33.1-24-05-94, including:

(a) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(b) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(3) Sketches, drawings, or data demonstrating compliance with section 33.1-24-05-95 (location of buffer zone and containers holding ignitable or reactive wastes) and subsection 3 of section 33.1-24-05-96 (location of incompatible wastes), where applicable.

(4) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with subsections 1 and 2 of section 33.1-24-05-96 and subsections 2 and 3 of section 33.1-24-05-08.

(5) Information on air emission control equipment as required in subdivision hh.

t. Except as otherwise provided in section 33.1-24-05-103, owners and operators of facilities that use tanks to store or treat hazardous waste shall provide the following additional information:

(1) A written assessment that is reviewed and certified by a qualified professional engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under sections 33.1-24-05-104 and 33.1-24-05-105;

(2) Dimensions and capacity of each tank;

(3) Description of feed systems, safety cutoff, bypass systems, and pressure controls, for example, vents;

(4) A diagram of piping, instrumentation, and process flow for each tank system;

(5) A description of materials and equipment used to provide external corrosion protection, as required under paragraph 2 of subdivision c of subsection 1 of section 33.1-24-05-105;

(6) For new tank systems, a detailed description of how the tank systems will be installed in compliance with subsections 2, 3, 4, and 5 of section 33.1-24-05-105;

(7) Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of subsections 1, 2, 3, 4, 5, and 6 of section 33.1-24-05-106;

(8) For tank systems for which a variance from the requirements of section 33.1-24-05-106 is sought (as provided by subsection 7 of section 33.1-24-05-106):

(a) Detailed plans and engineering and hydrogeologic reports, as appropriate, alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility; or

(b) A detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment;

(9) Description of controls and practices to prevent spills and overflows, as required under subsection 2 of section 33.1-24-05-107;

(10) For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of sections 33.1-24-05-111 and 33.1-24-05-112; and

(11) Information on air emission control equipment as required in subdivision hh.

u. For facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in section 33.1-24-05-01:

(1) A list of the hazardous wastes placed or to be placed in each surface impoundment.

(2) Detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated, and maintained to meet the requirements of sections 33.1-24-05-10, 33.1-24-05-119, 33.1-24-05-126, and 33.1-24-05-127. This submission must address the following items as specified in those sections.

(a) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner system is sought as provided by subsection 2 of section 33.1-24-05-119, submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time.

(b) The double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of subsection 3 of section 33.1-24-05-119. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by subsection 4, 5, or 6 of section 33.1-24-05-119, submit appropriate information.

(c) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system.

(d) The construction quality assurance plan if required under section 33.1-24-05-10.

(e) Proposed action leakage rate, with rationale, if required under section 33.1-24-05-126, and response action plan, if required under section 33.1-24-05-127.

(f) Prevention of overtopping.

(g) Structural integrity of dikes.

(3) A description of how each surface impoundment, including the double liner system, leak detection system, cover system, and appurtenances for control of overtopping will be inspected in order to meet the requirements of subsections 1, 2, and 4 of section 33.1-24-05-120. This information must be included in the inspection plan submitted under subdivision e.

(4) A certification by a qualified engineer which attests to the structural integrity of each dike as required under subsection 3 of section 33.1-24-05-120. For new units, the owner or operator must submit a statement by a qualified engineer that the engineer will provide such a certification upon completion of construction in accordance with the plans and specifications.

(5) A description of the procedure to be used for removing a surface impoundment from service as required under subsections 2 and 3 of section 33.1-24-05-121. This

information should be included in the contingency plan submitted under subdivision g.

(6) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure as required under subdivision a of subsection 1 of section 33.1-24-05-122. For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how subsection 2 and subdivision b of subsection 1 of section 33.1-24-05-122 will be complied with. This information should be included in the closure plan and where applicable, the postclosure plan submitted under subdivision m.

(7) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how section 33.1-24-05-123 will be complied with.

(8) If incompatible wastes or incompatible wastes and materials will be placed in the surface impoundment, an explanation of how section 33.1-24-05-124 will be complied with.

(9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of section 33.1-24-05-125. This submission must address the following items as specified in section 33.1-24-05-125:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

(b) The attenuative properties of underlying and surrounding soils or other materials.

(c) The mobilizing properties of other materials codisposed with these wastes.

(d) The effectiveness of additional treatment, design, or monitoring techniques.

(10) Information on air emission control equipment as required in subdivision hh.

v. For facilities that treat or store hazardous waste in waste piles, except as otherwise provided in section 33.1-24-05-01:

(1) A list of hazardous wastes placed, or to be placed, in each waste pile.

(2) If an exemption is sought to section 33.1-24-05-131 and sections 33.1-24-05-47 through 33.1-24-05-58, as provided by subsection 3 of section 33.1-24-05-130 or subdivision b of subsection 2 of section 33.1-24-05-47, an explanation of how the requirements of subsection 3 of section 33.1-24-05-130 will be complied with or detailed plans and an engineering report describing how the requirements of subdivision b of subsection 2 of section 33.1-24-05-47 will be met.

(3) Detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated, and maintained to meet the requirements of sections 33.1-24-05-10, 33.1-24-05-131, 33.1-24-05-137, and 33.1-24-05-138. This submission must address the following items as specified in those sections:

(a) The liner system.

[1] The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of subsection 1 of section 33.1-24-05-131. If an exemption from the requirement for a liner is sought as provided by subsection 2 of section 33.1-24-05-131, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

[2] The double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of subsection 2 of section 33.1-24-05-131. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by subsection 3, 4, or 5 of section 33.1-24-05-131, submit appropriate information;

[3] If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

[4] The construction quality assurance plan if required under section 33.1-24-05-10; and

[5] Proposed action leakage rate, with rationale, if required under section 33.1-24-05-137, and response action plan, if required under section 33.1-24-05-138.

(b) Control of run-on.

(c) Control of runoff.

(d) Management of collection and holding units associated with run-on and runoff control systems.

(e) Control of wind dispersal of particulate matter, where applicable.

(4) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of subsections 1, 2, and 3 of section 33.1-24-05-132. This information must be included in the inspection plan submitted under subdivision e.

(5) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals.

(6) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of section 33.1-24-05-133 will be complied with.

(7) If incompatible wastes or incompatible wastes and materials will be placed in a waste pile, an explanation of how section 33.1-24-05-134 will be complied with.

(8) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at the closure, as required under subsection 1 of section 33.1-24-05-135. For any wastes not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how subsections 1 and 2 of section 33.1-24-05-180 will be complied with.

This information should be included in the closure plan and where applicable, the postclosure plan, submitted under subdivision m.

(9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a waste pile that is not enclosed (as defined in subsection 3 of section 33.1-24-05-130) is or will be designed, constructed, operated, and maintained to meet the requirements of section 33.1-24-05-136. This submission must address the following items as specified in section 33.1-24-05-136:

(a) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

(b) The attenuative properties of underlying and surrounding soils or other materials.

(c) The mobilizing properties of other materials codisposed with these wastes.

(d) The effectiveness of additional treatment, design, or monitoring techniques.

w. For facilities that incinerate hazardous waste, except as section 33.1-24-05-144 and paragraph 5 provides otherwise, the owner or operator must fulfill the requirements of paragraphs 1, 2, or 3.

(1) When seeking an exemption under subsections 2 or 3 of section 33.1-24-05-144 (ignitable, corrosive, or reactive wastes only), submit documentation, that the waste to be burned:

(a) Is hazardous (either listed in sections 33.1-24-02-15 through 33.1-24-02-19 or fails the characteristic tests in sections 33.1-24-02-10 through 33.1-24-02-14) solely because it is:

[1] Ignitable, or corrosive, or both; or

[2] Listed in sections 33.1-24-02-15 through 33.1-24-02-19 as reactive for characteristics other than those in subdivisions d and e of subsection 1 of section 33.1-24-02-13, or fails the characteristic in subdivisions a, b, c, e, f, g, or h of subsection 1 of section 33.1-24-02-133, and will not be burned when other hazardous wastes are present in the combustion zone.

(2) Submit a trial burn plan or the results of a trial burn, including all required determinations in accordance with subsection 2 of section 33.1-24-06-19.

(3) In lieu of a trial burn, the applicant may submit the following information:

(a) An analysis of each waste or mixture of wastes to be burned, including:

[1] Heat value of the waste in the form and composition in which it will be burned.

[2] Viscosity (if applicable), or description of physical form of the waste.

[3] An identification of any hazardous organic constituents listed in chapter 33.1-24-02, appendix V, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in chapter 33.1-24-02, appendix V, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must

be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques.

[4] An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

[5] A quantification of those hazardous constituents in the waste which may be designated as principal organic hazardous constituents based on data submitted from the other trial or operational burns which demonstrate compliance with the performance standard in section 33.1-24-05-147.

(b) A detailed engineering description of the incinerator, including:

[1] Manufacturer's name and model number of incinerator.

[2] Type of incinerator.

[3] Linear dimension of incinerator unit including cross-sectional area of combustion chamber.

[4] Description of auxiliary fuel system (type/feed).

[5] Capacity of prime mover.

[6] Description of automatic waste feed cutoff systems.

[7] Stack gas monitoring and pollution control monitoring system.

[8] Nozzle and burner design.

[9] Construction materials.

[10] Location and description and temperature, pressure, and flow indicating devices and control devices.

(c) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in subparagraph a. This analysis should specify the principal organic hazardous constituents which the applicant has identified in the waste for which a permit is sought and any differences from the principal organic hazardous constituents in the waste for which burn data are provided.

(d) The design and operating conditions of the incinerator unit to be used, compared with that for which comparable burn data are available.

(e) A description of the results submitted from any previously conducted trial burns, including:

[1] Sampling and analysis techniques used to calculate performance standards in section 33.1-24-05-147.

[2] Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

(f) The expected incinerator operation information to demonstrate compliance with sections 33.1-24-05-147 and 33.1-24-05-149, including:

[1] Expected carbon monoxide level in the stack exhaust gas.

[2] Waste feed rate.

[3] Combustion zone temperature.

[4] Indication of combustion gas velocity.

[5] Expected stack gas volume, flow rate, and temperature.

[6] Computed residence time for waste in the combustion zone.

[7] Expected hydrochloric acid removal efficiency.

[8] Expected fugitive emissions and their control procedures.

[9] Proposed waste feed cutoff limits based on the identified significant operating parameters.

(g) Such supplemental information as the department finds necessary to achieve the purposes of this paragraph.

(h) Waste analysis data, including that submitted in subparagraph a, sufficient to allow the department to specify as permit principal organic hazardous constituents those constituents for which destruction and removal efficiencies will be required.

(4) The department shall approve a permit application without a trial burn if the department finds that:

(a) The wastes are sufficiently similar; and

(b) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under section 33.1-24-05-149) operating conditions that will ensure that the performance standards in section 33.1-24-05-147 will be met.

(5) When an owner or operator of a hazardous waste incineration unit becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subdivision do not apply, except those provisions the department determines are necessary to ensure compliance with subsections 1 and 3 of section 33.1-24-05-149 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33.1-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the department may apply the provisions of this subdivision, on a case-by-case basis, for purposes of information collection in accordance with subsections 11 and 12 of section 33.1-24-06-01 and subdivisions b and c of subsection 2 of section 33.1-24-06-05.

x. For facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in section 33.1-24-05-01:

(1) A description of plans to conduct a treatment demonstration as required under section 33.1-24-05-162. The description must include the following information:

(a) The wastes for which the demonstration will be made and the potential hazardous constituents in the waste.

(b) The data sources to be used to make the demonstration, for example, literature, laboratory data, field data, or operating data.

(c) Any specific laboratory or field test that will be conducted, including:

[1] The type of test, for example, column leaching, degradation.

[2] Materials and methods, including analytical procedures.

[3] Expected time for completion.

[4] Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices.

(2) A description of a land treatment program as required under section 33.1-24-05-161. This information must be submitted with the plans for the treatment demonstration and updated following the treatment demonstration. The land treatment program must address the following items:

(a) The wastes to be land treated.

(b) Design measures and operating practices necessary to maximize treatment in accordance with subsection 1 of section 33.1-24-05-163, including:

[1] Waste application method and rate.

[2] Measures to control soil pH.

[3] Enhancement of microbial or chemical reactions.

[4] Control of moisture content.

(c) Provisions for unsaturated zone monitoring, including:

[1] Sampling equipment, procedures, and frequency.

[2] Procedures for selecting sampling locations.

[3] Analytical procedures.

[4] Chain of custody control.

[5] Procedures for establishing background values.

[6] Statistical methods for interpreting results.

[7] Justification for any hazardous constituents recommended for selection as principal hazardous constituents in accordance with the criteria for such selection in subsection 1 of section 33.1-24-05-165.

(d) A list of hazardous constituents reasonably expected to be in, or derived from, the waste to be land treated based on waste analysis performed pursuant to section 33.1-24-05-04.

(e) The proposed dimensions of the treatment zone.

(3) A description of how the unit is, or will be designed, constructed, operated, and maintained in order to meet the requirements of section 33.1-24-05-163. This submission must address the following items:

(a) Control of run-on.

(b) Collection and control of runoff.

(c) Minimization of runoff of hazardous constituents from the treatment zone.

(d) Management of collection and holding facilities associated with run-on and runoff control systems.

(e) Periodic inspection of the unit. This information should be included in the inspection plan submitted under subdivision e.

(f) Control of wind dispersal of particulate matter, if applicable.

(4) If food chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under subsection 1 of section 33.1-24-05-164 will be conducted, including:

(a) Characteristics of the food chain crop for which the demonstration will be made.

(b) Characteristics of the waste treatment zone and waste application method and rate to be used in the demonstration.

(c) Procedures for crop growth, sample collection, sample analysis, and data evaluation.

(d) Characteristics of the comparison crop, including the location and conditions under which it was or will be grown.

(5) If food chain crops are to be grown and cadmium is present in the land treated waste, a description of how the requirements of subsection 5 of section 33.1-24-05-164 will be complied with.

(6) A description of the vegetative cover to be applied to closed portions of the facility and a plan for maintaining such cover during the postclosure care period as required under subdivision h of subsection 1 and subdivision b of subsection 3 of section 33.1-24-05-167. This information should be included in the closure plan and where applicable, the postclosure care plan submitted under subdivision m.

(7) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of section 33.1-24-05-168 will be complied with.

(8) If incompatible wastes or incompatible wastes and materials will be placed in or on the same treatment zone, an explanation of how section 33.1-24-05-169 will be complied with.

(9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of section 33.1-24-05-170. This submission must address the following items as specified in section 33.1-24-05-170:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

(b) The attenuative properties of underlying and surrounding soils or other materials.

(c) The mobilizing properties of other materials codisposed with these wastes.

(d) The effectiveness of additional treatment, design, or monitoring techniques.

y. For facilities that dispose of hazardous waste in landfills, except as otherwise provided in section 33.1-24-05-01:

(1) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell.

(2) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to comply with the requirements of sections 33.1-24-05-10, 33.1-24-05-177, 33.1-24-05-178, and 33.1-24-05-187. This submission must address the following items as specified in those sections:

(a) The liner system.

[1] The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of subsection 1 of section 33.1-24-05-177. If an exemption from the requirement for a liner is sought as provided by subsection 2 of section 33.1-24-05-177, submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

[2] The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of subsection 3 of section 33.1-24-05-177. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by subsections 4, 5, or 6 of section 33.1-24-05-177, submit appropriate information;

[3] If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

[4] The construction quality assurance plan if required under section 33.1-24-05-10; and

[5] Proposed action leakage rate, with rationale, if required under section 33.1-24-05-187, and response action plan, if required under section 33.1-24-05-178.

(b) Control of run-on.

(c) Control of runoff.

(d) Management of collection and holding facilities associated with run-on and runoff control systems.

(e) Control of wind dispersal of particulate matter where applicable.

(3) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of subsections 1, 2, and 3 of section 33.1-24-05-178. This information must be included in the inspection plan submitted under subdivision e.

(4) A description of how each landfill, including the liner and cover systems will be inspected in order to meet the requirements of subsections 1 and 2 of section 33.1-24-05-178. This information should be included in the inspection plan submitted under subdivision e.

(5) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with subsection 1 of section 33.1-24-05-180 and a description of how each landfill will be maintained and monitored after closure in accordance with subsection 2 of section 33.1-24-05-180. This information should be included in the closure and postclosure plans submitted under subdivision m.

(6) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of section 33.1-24-05-181 will be complied with.

(7) If incompatible wastes or incompatible wastes and materials will be landfilled, an explanation of how section 33.1-24-05-182 will be complied with.

(8) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of section 33.1-24-05-184 or 33.1-24-05-185, as applicable, will be complied with.

(9) A waste management plan for hazardous wastes F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of section 33.1-24-05-186. This submission must address the following items as specified in section 33.1-24-05-186:

(a) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere.

(b) The attenuative properties of underlying and surrounding soils or other materials.

(c) The mobilizing properties of other materials codisposed with these wastes.

(d) The effectiveness of additional treatment, design, or monitoring techniques.

z. [Reserved].

aa. For land disposal facilities, if a case-by-case extension has been approved under section 33.1-24-05-254 or a petition has been approved under section 33.1-24-05-255, a copy of the notice of approval for the extension or petition is required.

bb. Except as otherwise provided in section 33.1-24-05-300, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:

(1) A detailed description of the unit being used or proposed for use, including the following:

(a) Physical characteristics, materials of construction, and dimensions of the unit;

(b) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of sections 33.1-24-05-301 and 33.1-24-05-302; and

(c) For disposal units, a detailed description of the plans to comply with the postclosure requirements of section 33.1-24-05-303.

(2) Detailed hydrologic, geologic, and meteorologic assessments and land use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of section 33.1-24-05-301. If the applicant can demonstrate that the applicant does not violate the environmental performance standards of section 33.1-24-05-301 and the department agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(3) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.

(4) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.

(5) Any additional information determined by the department to be necessary for evaluation of compliance of the unit with the environmental performance standards of section 33.1-24-05-301.

cc. Except as otherwise provided in section 33.1-24-05-01, owners and operators of facilities that have process vents to which sections 33.1-24-05-400 through 33.1-24-05-419 apply must provide the following additional information:

(1) For facilities that cannot install a closed-vent system and control device to comply with the provisions of sections 33.1-24-05-400 through 33.1-24-05-419 on the effective date that the facility becomes subject to the provisions of sections 33.1-24-05-400 through 33.1-24-05-419, an implementation schedule as specified in subdivision b of subsection 1 of section 33.1-24-05-403.

(2) Documentation of compliance with the process vent standards in section 33.1-24-05-402, including:

(a) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, for example, the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, for example, identify the hazardous waste management units on a facility plot plan.

(b) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values, for example, temperatures, flow rates, or concentrations, that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(c) Information and data used to determine whether or not a process vent is subject to the requirements of section 33.1-24-05-402.

(3) If an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of section 33.1-24-05-402, and chooses to use the test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in subdivision c of subsection 2 of section 33.1-24-05-405.

(4) Documentation of compliance with section 33.1-24-05-403, including:

(a) A list of all information references and sources used in preparing the documentation.

(b) Records, including the dates, of each compliance test required by subsection 11 of section 33.1-24-05-403.

(c) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in section 33.1-24-01-05) or other engineering texts acceptable to the department that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in paragraph 3 of subdivision d of subsection 2 of section 33.1-24-05-405.

(d) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(e) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five weight percent or greater unless the total organic emission limits of subsection 1 of section 33.1-24-05-402 for affected access vents at the facility can be attained by a control device involving vapor recovery at an efficiency level less than ninety-five weight percent.

dd. Except as otherwise provided in section 33.1-24-05-01, owners and operators of facilities that have equipment to which sections 33.1-24-05-420 through 33.1-24-05-449 apply must provide the following additional information:

(1) For each piece of equipment to which sections 33.1-24-05-420 through 33.1-24-05-449 apply:

(a) Equipment identification number and hazardous waste management unit identification.

(b) Approximate locations within the facility, for example, identify the hazardous waste management unit on a facility plot plan.

(c) Type of equipment, for example, a pump or pipeline valve.

(d) Percent by weight total organics in the hazardous waste stream at the equipment.

(e) Hazardous waste state at the equipment, for example, gas or vapor or liquid.

(f) Method of compliance with the standard, for example, "monthly leak detection and repairs" or "equipped with dual mechanical seals".

(2) For facilities that do not install a closed-vent system and control device to comply with the provisions of sections 33.1-24-05-420 through 33.1-24-05-449 on the effective date that the facility becomes subject to the provisions of sections 33.1-24-05-420 through 33.1-24-05-449, an implementation schedule as specified in subdivision b of subsection 1 of section 33.1-24-05-403.

(3) If an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in subdivision c of subsection 2 of section 33.1-24-05-405.

(4) Documentation that demonstrates compliance with the equipment standards in sections 33.1-24-05-422 to 33.1-24-05-429. This documentation must contain the records required under section 33.1-24-05-434. The department may request further documentation before deciding if compliance has been demonstrated.

(5) Documentation to demonstrate compliance with section 33.1-24-05-430 must include the following information:

(a) A list of all information references and sources used in preparing the documentation.

(b) Records, including the dates, of each compliance test required by subsection 10 of section 33.1-24-05-403.

(c) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in section 33.1-24-01-05) or other engineering texts acceptable to the department that present basic control device information. The design analysis should address the vent stream characteristics and control device operation parameters as specified in paragraph 3 of subdivision d of subsection 2 of section 33.1-24-05-405.

(d) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(e) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of ninety-five weight percent or greater.

ee. Except as otherwise provided by section 33.1-24-05-01, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(1) A list of hazardous wastes placed or to be placed on each drip pad.

(2) If an exemption is sought to sections 33.1-24-05-47 through 33.1-24-05-58, as provided by section 33.1-24-05-47, detailed plans and an engineering report describing how the requirements of subdivision b of subsection 2 of section 33.1-24-05-47 will be met.

(3) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated, and maintained to meet the requirements of section 33.1-24-05-504, including the as-built drawings and specifications. This submission must address the following items as specified in section 33.1-24-05-502:

(a) The design characteristics of the drip pad;

(b) The liner system;

(c) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(d) Practices designed to maintain drip pads;

(e) The associated collection system;

(f) Control of run-on to the drip pad;

(g) Control of runoff from the drip pad;

(h) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(i) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;

(j) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(k) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(l) Provisions for ensuring that collection and holding units associated with the run-on and runoff control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(m) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;

(n) A description of how each drip pad, including appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of section 33.1-24-05-504. This information should be included in the inspection plan submitted under subdivision e;

(o) A certification signed by a qualified, professional engineer, stating that the drip pad design meets the requirements of subsections 1 through 6 of section 33.1-24-05-504; and

(p) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under subsection 1 of section 33.1-24-05-506. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how section 33.1-24-05-180 will be complied with. This information should be included in the closure plan and, where applicable, the postclosure plan submitted under subdivision m.

ff. When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subdivision do not apply. The requirements of this subdivision do apply, however, if the department determines certain provisions are necessary to ensure compliance with subdivision a of subsection 5 of section 33.1-24-05-527 and paragraph 3 of subdivision b of subsection 5 of section 33.1-24-05-527 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33.1-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if the permittee is an area source and elects to comply with the sections 33.1-24-05-530, 33.1-24-05-531, and 33.1-24-05-532 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and nonmercury metals; or the department determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with subsections 11 and 12 of section 33.1-24-06-01 and subdivisions b and c of subsection 2 of section 33.1-24-06-05.

(1) Trial burns.

(a) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by section 33.1-24-05-529, standards to control particulate matter provided by section 33.1-24-05-530, standards to control metals emissions provided by section 33.1-24-05-531, or standards to control hydrogen chloride or chlorine gas emissions provided by section 33.1-24-05-532 must conduct a trial burn to demonstrate conformance with those standards and must submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with subsection 4 of section 33.1-24-06-19.

[1] A trial burn to demonstrate conformance with a particular emission standard may be waived under provisions of sections 33.1-24-05-529 through 33.1-24-05-532 and subparagraphs b through e; and

[2] The owner or operator may submit data in lieu of a trial burn, as prescribed in subparagraph f.

(b) Waiver of trial burn for destruction and removal efficiency.

[1] Boilers operated under special operating requirements. When seeking to be permitted under subdivision d of subsection 1 of section 33.1-24-05-529 and section 33.1-24-05-535 that automatically waive the destruction and removal efficiency trial burn, the owner or operator of a boiler must submit documentation that the boiler operates under the special operating requirements provided by section 33.1-24-05-535.

[2] Boilers and industrial furnaces burning low-risk waste. When seeking to be permitted under the provisions for low-risk waste provided by subdivision e of subsection 1 of section 33.1-24-05-529 and subsection 1 of section 33.1-24-05-534 that waive the destruction and removal efficiency trial burn, the owner or operator must submit:

[a] Documentation that the device is operated in conformance with the requirements of subdivision a of subsection 1 of section 33.1-24-05-534.

[b] Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix V of chapter 33.1-24-02, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques.

[c] Documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in subitem b using procedures provided by paragraph 2 of subdivision b of subsection 1 of section 33.1-24-05-534.

[d] Results of emissions dispersion modeling for emissions identified in subitem c using modeling procedures prescribed by subsection 8 of section 33.1-24-05-531. The department will review the emission modeling conducted by the applicant to determine conformance with these procedures. The department will either approve the modeling or determine that alternate or supplementary modeling is appropriate.

[e] Documentation that the maximum annual average ground level concentration of each constituent identified in subitem b quantified in conformance with subitem d does not exceed the allowable ambient level established in appendices XIX or XX of chapter 33.1-24-05. The acceptable ambient concentration for emitted constituents for which a specific reference air concentration has not been established in appendix XIX of chapter 33.1-24-05 or risk-specific dose has not been established in appendix XX of chapter 33.1-24-05

is one-tenth microgram per cubic meter, as noted in the footnote to appendix XIX of chapter 33.1-24-05.

(c) Waiver of trial burn for metals. When seeking to be permitted under the tier I (or adjusted tier I) metals feed rate screening limits provided by subsections 2 and 5 of section 33.1-24-05-531 that control metals emissions without requiring a trial burn, the owner or operator must submit:

[1] Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feedstocks;

[2] Documentation of the concentration of each metal controlled by subsection 2 or 5 of section 33.1-24-05-531 in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;

[3] Documentation of how the applicant will ensure that the tier I feed rate screening limits provided by subsection 2 or 5 of section 33.1-24-05-531 will not be exceeded during the averaging period provided by that subsection;

[4] Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by subdivisions c through e of subsection 2 of section 33.1-24-05-531;

[5] Documentation of compliance with the provisions of subdivision f of subsection 2 of section 33.1-24-05-531, if applicable, for facilities with multiple stacks;

[6] Documentation that the facility does not fail the criteria provided by subdivision g of subsection 2 of section 33.1-24-05-531 for eligibility to comply with the screening limits; and

[7] Proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feedstocks.

(d) Waiver of trial burn for particulate matter. When seeking to be permitted under the low-risk waste provisions of subsection 2 of section 33.1-24-05-534 which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants must submit documentation supporting conformance with item 2 of subparagraph b and subparagraph c.

(e) Waiver of trial burn for hydrogen chloride and chlorine. When seeking to be permitted under the tier I (or adjusted tier I) feed rate screening limits for total chloride and chlorine provided by subdivision a of subsection 2 and subsection 5 of section 33.1-24-05-532 that control emissions of hydrogen chloride and chlorine gas without requiring a trial burn, the owner or operator must submit:

[1] Documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feedstocks;

[2] Documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;

[3] Documentation of how the applicant will ensure that the tier I (or adjusted tier I) feed rate screening limits provided by subdivision a of subsection 2 or subsection 5 of section 33.1-24-05-532 will not be exceeded during the averaging period provided by that subsection;

[4] Documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by subdivision c of subsection 2 of section 33.1-24-05-532;

[5] Documentation of compliance with the provisions of subdivision d of subsection 2 of section 33.1-24-05-532, if applicable, for facilities with multiple stacks;

[6] Documentation that the facility does not fail the criteria provided by subdivision c of subsection 2 of section 33.1-24-05-532 for eligibility to comply with the screening limits; and

[7] Proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.

(f) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with sections 33.1-24-05-529 through 33.1-24-05-532 and subsection 4 of section 33.1-24-06-19 by providing the information required by subsection 4 of section 33.1-24-06-19 from previous compliance testing of the device in conformance with section 33.1-24-05-528, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by subsection 4 of section 33.1-24-06-19 must be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information must be provided. The department shall approve a permit application without a trial burn if the department finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under section 33.1-24-05-527) operating conditions that will ensure conformance with subsection 3 of section 33.1-24-05-527. In addition, the following information shall be submitted:

[1] For a waiver from any trial burn:

[a] A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;

[b] The design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and

[c] Such supplemental information as the department finds necessary to achieve the purposes of this subparagraph.

[2] For a waiver of the destruction and removal efficiency trial burn, the basis for selection of principal organic hazardous constituents used in the other trial or operational burns which demonstrate compliance with the destruction and removal efficiency performance standard in subsection 1 of section 33.1-24-05-529. This analysis should specify the constituents in appendix V of chapter 33.1-24-02, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the principal organic hazardous constituents in the hazardous waste for which burn data are provided.

(2) Alternative hydrocarbon limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative hydrocarbon limit under subsection 6 of section 33.1-24-05-529 shall submit the following information at a minimum:

(a) Documentation that the furnace is designed and operated to minimize hydrocarbon emissions from fuels and raw materials;

(b) Documentation of the proposed baseline flue gas hydrocarbon (and carbon monoxide) concentration, including data on hydrocarbon (and carbon monoxide) levels during tests when the facility produced normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;

(c) Test burn protocol to confirm the baseline hydrocarbon (and carbon monoxide) level, including information on the type and flow rate of all feed streams, point of introduction of all feed streams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feed streams, and operating conditions that affect combustion of fuels and destruction of hydrocarbon emissions from nonfuel sources;

(d) Trial burn plan to:

[1] Demonstrate that flue gas hydrocarbon (and carbon monoxide) concentrations when burning hazardous waste do not exceed the baseline hydrocarbon (and carbon monoxide) level; and

[2] Identify the types and concentrations of organic compounds listed in appendix V of chapter 33.1-24-02, that are emitted when burning hazardous waste in conformance with procedures prescribed by the department;

(e) Implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline hydrocarbon level and procedures to periodically confirm the baseline hydrocarbon level; and

(f) Such other information as the department finds necessary to achieve the purposes of this paragraph.

(3) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under subsection 6 of section 33.1-24-05-531, the owner or operator must submit documentation specifying how the approach ensures compliance with the metals emissions standards of subsection 3 or 4 of section 33.1-24-05-531 and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide

such other information that the department finds necessary to achieve the purposes of this paragraph.

(4) Automatic waste feed cutoff system. Owners and operators shall submit information describing the automatic waste feed cutoff system, including any prealarm systems that may be used.

(5) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in section 33.1-24-05-536) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by section 33.1-24-05-536.

(6) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of section 33.1-24-05-537 must submit information adequate to demonstrate conformance with those provisions.

gg. A summary of the preapplication meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under subsection 3 of section 33.1-24-07-25.

hh. Except as otherwise provided in section 33.1-24-05-01, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of sections 33.1-24-05-450 through 33.1-24-05-474 must provide the following additional information:

(1) Documentation for each floating roof cover installed on a tank subject to subdivision a or b of subsection 4 of section 33.1-24-05-454 that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in subdivision a of subsection 5 or subdivision a of subsection 6 of section 33.1-24-05-454.

(2) Identification of each container area subject to the requirements of sections 33.1-24-05-450 through 33.1-24-05-474 and certification by the owner or operator that the requirements of sections 33.1-24-05-450 through 33.1-24-05-474 are met.

(3) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of subdivision e of subsection 4 of section 33.1-24-05-454 or paragraph 2 of subdivision a of subsection 5 of section 33.1-24-05-456 that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of subsection 3 of section 33.1-24-05-455 that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in subdivision a of subsection 3 of section 33.1-24-05-455.

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of section 33.1-24-05-457 that includes design and performance information as specified in paragraphs 3 and 4 of subdivision cc.

(6) An emission monitoring plan for both method 21 in 40 CFR part 60, appendix A and control device monitoring methods. This plan shall include the following information: monitoring point or points, monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to sections 33.1-24-05-450 through 33.1-24-05-474 cannot comply with the requirements of sections 33.1-24-05-450 through 33.1-24-05-474 by the date of permit issuance, the schedule of implementation required under 40 CFR 265.1082 as incorporated by reference at subsection 5 of section 33.1-24-06-16 must be provided.

3. Additional information requirements. The following additional information regarding protection of ground water is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in subsection 2 of section 33.1-24-05-47.

a. A summary of the ground water monitoring data obtained during the interim status period under subsection 5 of section 33.1-24-06-16, where applicable.

b. Identification of the uppermost aquifer and aquifers hydrologically interconnected beneath the facility property, including ground water flow direction and rate, and the basis for such identification, for example, the information obtained from hydrogeologic investigations of the facility area.

c. On the topographic map required under subdivision q of subsection 2, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under section 33.1-24-05-52, the proposed location of ground water monitoring wells as required under section 33.1-24-05-54, and to the extent possible, the information required in subdivision b.

d. A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application was submitted:

(1) Delineates the extent of the plume on the topographic map required under subdivision q of subsection 2; and

(2) Identifies the concentration of each appendix XII, of chapter 33.1-24-05, constituent throughout the plume or identifies the maximum concentrations of each appendix XII constituent in the plume.

e. Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of section 33.1-24-05-54.

f. If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analysis to establish a detection monitoring program which meets the requirements of section 33.1-24-05-55. This submission must address the following items specified under section 33.1-24-05-55:

(1) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(2) A proposed ground water monitoring system;

(3) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(4) A description of proposed sampling, analysis, and statistical comparison procedures to be analyzed in evaluating ground water monitoring data.

g. If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of the permit application, the owner or operator must submit sufficient information, supporting data, and analysis to establish a compliance monitoring program which meets the requirements of section 33.1-24-05-56. Except as provided in subdivision e of subsection 8 of section 33.1-24-05-55, the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of section 33.1-24-05-57 unless the owner or operator obtains a written authorization in advance from the department to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with section 33.1-24-05-56, the owner or operator must address the following items:

(1) A description of the wastes previously handled at the facility;

(2) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(3) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with sections 33.1-24-05-54 and 33.1-24-05-56;

(4) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in subsection 1 of section 33.1-24-05-51, including a justification for establishing any alternate concentration limit;

(5) Detailed plans and an engineering report describing the proposed ground water monitoring system, in accordance with the requirements of section 33.1-24-05-54; and

(6) A description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating ground water monitoring data.

h. If hazardous constituents have been measured in the ground water which exceed the concentration limits established under section 33.1-24-05-51, table 1, or if ground water monitoring conducted at the time of permit application under sections 33.1-24-05-47 through 33.1-24-05-51 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over the background concentrations, the owner or operator must submit sufficient information, supporting data, and analysis to establish a corrective action program which meets the requirements of section 33.1-24-05-57. However, an owner or operator is not required to submit information to establish a corrective action program if the owner or operator demonstrates to the department that alternate concentration limits will protect human health and the environment after considering the criteria listed in subsection 2 of section 33.1-24-05-51. An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of section 33.1-24-05-56 and subdivision f. To demonstrate compliance with section 33.1-24-05-57, the owner or operator must address, at a minimum, the following items:

(1) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(2) The concentration limit for each hazardous constituent found in the ground water as set forth in section 33.1-24-05-51;

(3) Detailed plans and an engineering report describing the corrective action to be taken; and

(4) A description of how the ground water monitoring program will demonstrate the adequacy of the corrective action.

(5) The permit may contain a schedule for submittal of the information required in paragraphs 3 and 4 provided the owner or operator obtains written authorization from the department prior to submittal of the complete permit application.

4. Information requirements for solid waste management units.

a. The following information is required for each solid waste management unit at a facility seeking a permit:

(1) The location of a unit on the topographic map required under subdivision g of subsection 2.

(2) Designation of type of unit.

(3) General dimensions and structural description (supply any available drawings).

(4) When the unit was operated.

(5) Specification of all wastes that have been managed at the unit to the extent available.

b. The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

c. The owner or operator must conduct and provide the results of sampling and analysis of ground water, land surface, and subsurface strata, surface water, or air, which may include the installation of wells, where the department ascertains it is necessary to complete a hazardous waste facility assessment that will determine if a more complete investigation is necessary.

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, 23.1-04-08, 23.1-04-15; S.L. 2017, ch. 199, § 19

33.1-24-06-18. Permits by rule.

Notwithstanding any other provision of this chapter or chapter 33.1-24-07, the following are deemed to have a hazardous waste permit if the conditions listed are met:

1. **Injection wells.** The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

a. Has a permit for underground injection issued under 40 CFR part 144 or 145;

b. Complies with the conditions of that permit and the requirements of section 33.1-25-01-18 (requirements for wells managing hazardous waste) of article 33.1-25 (underground injection control); and

c. For underground injection control permits issued after November 8, 1984:

(1) Complies with section 33.1-24-05-58; and

(2) Where the underground injection control well is the only unit at a facility which requires a hazardous waste permit, complies with subsection 4 of section 33.1-24-06-17.

2. **Publicly owned treatment works.** The owner or operator of a publicly owned treatment works which accepts for treatment hazardous waste, if the owner or operator:

a. Has a North Dakota pollutant discharge elimination system permit;

b. Complies with the conditions of that permit; and

c. Complies with the following:

(1) Section 33.1-24-05-02, identification number.

(2) Section 33.1-24-05-38, use of manifest system.

(3) Section 33.1-24-05-39, manifest discrepancies.

(4) Subsection 1 and subdivision a of subsection 2 of section 33.1-24-05-40, operating record.

(5) Section 33.1-24-05-42, biennial report.

(6) Section 33.1-24-05-43, unmanifested waste report.

(7) Section 33.1-24-05-58, corrective action for solid waste management units.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-19. Special forms of permits.

1. **Emergency permits.** Notwithstanding any other provisions of this chapter or chapter 33.1-24-07, if the department finds an imminent and substantial endangerment to human health or the environment, the department may issue a temporary emergency permit to a nonpermitted facility to allow treatment, storage, or disposal of hazardous waste or a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit. This emergency permit:

a. May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

b. May not exceed ninety days in duration;

c. Must clearly specify the hazardous wastes to be received and the manner and location of their treatment, storage, or disposal;

d. May be terminated by the department at any time without process if the department determines that termination is appropriate to protect human health and the environment;

e. Must be accompanied by a public notice published under subsection 2 of section 33.1-24-07-06, including:

(1) Name and address of the office granting the emergency authorization;

(2) Name and location of the permitted hazardous waste management facility;

(3) A brief description of the wastes involved;

(4) A brief description of the action authorized and reasons for authorizing it; and

(5) Duration of the emergency permit; and

f. Must incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and chapter 33.1-24-05.

2. **Hazardous waste incinerator permits.** When an owner or operator of a hazardous waste incineration unit becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subsection do not apply, except those provisions the department determines are necessary to ensure compliance with subsections 1 and 3 of section 33.1-24-05-149 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33.1-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the department may apply the provisions of this subsection, on a case-by-case basis, for purposes of information collection in accordance with subsections 11 and 12 of section 33.1-24-06-01 and subdivisions b and c of subsection 2 of section 33.1-24-06-05.

a. For the purposes of determining operational readiness following completion of physical construction, the department shall establish permit conditions, including allowable waste feeds and operating conditions in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed seven hundred twenty hours operating time for treatment of hazardous waste. The department may extend the duration of this operational period once for up to seven hundred twenty additional hours at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to section 33.1-24-06-14.

(1) Applicants shall submit a statement with the permit application which suggests the conditions necessary to operate in compliance with the performance standards of section 33.1-24-05-147 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in section 33.1-24-05-149.

(2) The department will review this statement and any other relevant information submitted with the permit application and specify requirements for this period sufficient to meet the performance standards of section 33.1-24-05-147 based on the department's engineering judgment.

b. For the purposes of determining feasibility of compliance with the performance standards of section 33.1-24-05-147 and of determining adequate operating conditions under section 33.1-24-05-149, the department shall establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants must propose a trial burn plan prepared under paragraph 2 with the permit application.

(2) The trial burn plan must include the following information:

(a) An analysis of each waste or mixture of wastes to be burned which includes:

[1] Heat value of the waste in the form and composition in which it will be burned.

[2] Viscosity (if applicable), or description of physical form of the waste.

[3] An identification of any hazardous organic constituents listed in chapter 33.1-24-02, appendix V, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in chapter 33.1-24-02, appendix V, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques.

[4] An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

(b) A detailed engineering description of the incinerator for which the permit is sought, including:

[1] Manufacturer's name and model number of incinerator (if available).

[2] Type of incinerator.

[3] Linear dimensions of the incinerator unit, including cross-sectional area of combustion chamber.

[4] Description of the auxiliary fuel system (type/feed).

[5] Capacity of prime mover.

[6] Description of automatic waste feed cutoff system or systems.

[7] Stack gas monitoring and pollution control equipment.

[8] Nozzle and burner design.

[9] Construction materials.

[10] Location and description of temperature, pressure, and flow indicating and control devices.

(c) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(d) A detailed test schedule for each waste for which the trial burn is planned, including dates, duration, quantity of waste to be burned, and other factors relevant to the department's decision under paragraph 5.

(e) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(f) A description of, and planned operating conditions for, any emission control equipment which will be used.

(g) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(h) Such other information as the department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph 5.

(3) In reviewing the trial burn plan, the department shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subsection.

(4) Based on the waste analysis data in the trial burn plan, the department will specify as trial principal organic hazardous constituents those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial principal organic hazardous constituents will be specified by the department based on the department's estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in sections 33.1-24-02-15 through 33.1-24-02-19, the hazardous waste organic constituent or constituents identified in appendix IV of chapter 33.1-24-02 as the basis for listing.

(5) The department shall approve a trial burn plan if the department finds that:

(a) The trial burn is likely to determine whether the incinerator performance standard required by section 33.1-24-05-147 can be met;

(b) The trial burn itself will not present an imminent hazard to human health or the environment;

(c) The trial burn will help the department determine operating requirements to be specified under section 33.1-24-05-149; and

(d) The information sought in subparagraphs a and c cannot reasonably be developed through other means.

(6) The department must send a notice to all persons on the facility mailing list as set forth in paragraph 4 of subdivision a of subsection 3 of section 33.1-24-07-06 and to the appropriate units of state and local government as set forth in subdivision b of subsection 3 of section 33.1-24-07-06 announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the department has issued such notice.

(a) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the department.

(b) This notice must contain:

[1] The name and telephone number of the applicant's contact person;

[2] The name and telephone number of the department's contact office;

[3] The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

[4] An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn (or as soon after the burn as practicable), the applicant must make the following determinations:

(a) A quantitative analysis of the trial principal organic hazardous constituents in the waste feed to the incinerator.

(b) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial principal organic hazardous constituents, oxygen, and hydrogen chloride.

(c) A quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial principal organic hazardous constituents.

(d) A computation of destruction and removal efficiency, in accordance with the destruction and removal efficiency formula specified in subsection 1 of section 33.1-24-05-147.

(e) If the hydrogen chloride emission rate exceeds one and eight-tenths kilograms of hydrogen chloride per hour [4 pounds per hour], a computation of the hydrogen chloride removal efficiency in accordance with subsection 2 of section 33.1-24-05-147.

(f) A computation of particulate emissions, in accordance with subsection 3 of section 33.1-24-05-147.

(g) An identification of sources of fugitive emissions and their means of control.

(h) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(i) A continuous measurement of carbon monoxides in the exhaust gas.

(j) Such other information as the department may specify as necessary to ensure that the trial burn will determine compliance with the performance standard in section 33.1-24-05-147 and to establish the operating conditions required by section 33.1-24-05-149 as necessary to meet that performance standard.

(8) The applicant shall submit to the department a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the determinations required in paragraph 6. This submission must be made within ninety days of the completion of the trial burn, or later if approved by the department.

(9) All data collected during any trial burn must be submitted to the department following the completion of the trial burn.

(10) All submissions required by this subdivision must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 33.1-24-06-03.

(11) Based on the results of the trial burn, the department shall set the operating requirements in the final permit according to section 33.1-24-05-149. The permit modification shall proceed according to section 33.1-24-06-14.

c. For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the department may establish permit conditions, including allowable waste feeds and operating conditions sufficient to meet the requirements of section 33.1-24-05-149 in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and modification of the facility permit by the department.

(1) Applicants shall submit a statement with the permit application which identifies the conditions necessary to operate in compliance with the performance standards of section 33.1-24-05-147 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in section 33.1-24-05-149.

(2) The department will review this statement and any other relevant information submitted with the permit application and specify those requirements for this period most likely to meet the performance standards of section 33.1-24-05-147 based on the department's engineering judgment.

d. For the purpose of determining feasibility of compliance with the performance standards of section 33.1-24-05-147 and of determining adequate operating conditions under section 33.1-24-05-149, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with paragraph 2 of subdivision w of subsection 2 of section 33.1-24-06-17 and paragraphs 2 through 5 and 7 through 10 of subdivision b or, instead, submit other information as specified in paragraph 3 of subdivision w of subsection 2 of section 33.1-24-06-17. The department must announce the department's intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph 6 of subdivision b. The contents of the notice must also include a schedule of the activities that are required prior to permit issuance. Applicants submitting information under paragraph 1 of subdivision w of subsection 2 of section 33.1-24-06-17 are exempt from compliance with sections 33.1-24-05-147 and 33.1-24-05-149 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results specified in paragraph 6 of subdivision b, with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the department to establish a later date for submission of the part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the department will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

3. **Permits for land treatment demonstrations using field tests or laboratory analyses.**

a. For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of section 33.1-24-05-162, the department may issue a treatment demonstration permit. The permit must contain only those requirements necessary to

meet the standards in subsection 3 of section 33.1-24-05-162. The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses or as a two-phase facility permit covering field tests or laboratory analyses and design construction, operation, and maintenance of the land treatment unit.

(1) The department may issue a two-phase facility permit if the department finds that based on information submitted in the permit application substantial, although incomplete or inconclusive, information already exists on which to base the issuance of a facility permit.

(2) If the department finds that not enough information exists upon which the department can establish permit conditions to attempt to provide for compliance with all the requirements of the land treatment requirements in sections 33.1-24-05-160 through 33.1-24-05-175, the department shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

b. If the department finds that a phased permit may be issued, the department will establish as requirements in the first phase of the facility permit conditions for conducting a field test or laboratory analyses. These permit conditions will contain design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, postdemonstration cleanup activities, and any other conditions which the department finds may be necessary under subsection 3 of section 33.1-24-05-162. The department will include conditions in the second phase of the facility permit to attempt to meet all the requirements in sections 33.1-24-05-160 through 33.1-24-05-175 pertaining to unit design, construction, operation, and maintenance. The department will establish these conditions in the second phase of the permit, based upon the substantial but incomplete or inconclusive information contained in the permit application.

(1) The first phase of the permit will be effective as provided in subsection 2 of section 33.1-24-07-11.

(2) The second phase of the permit will be effective as provided in subdivision d.

c. When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, the owner or operator shall submit to the department a certification signed by a person authorized to sign a permit application or report under section 33.1-24-06-03 that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within ninety days of completion of those tests or analyses, unless the department approves a later date.

d. If the department determines that the results of the field tests or laboratory analyses meet the requirements of section 33.1-24-05-162, the department will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with sections 33.1-24-05-160 through 33.1-24-05-175, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under section 33.1-24-06-14, or otherwise proceed as a modification under subdivision b of subsection 1 of section 33.1-24-06-12. If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modifications of the second phase of the permit are necessary, the department will give notice of the department's final decision to the permit applicant and to each

person who submitted written comments on the phased permit or who requested notice of the final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in subsection 2 of section 33.1-24-07-11.

4. **Permits for boilers and industrial furnaces burning hazardous waste.** When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to hazardous waste permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE (for example, by conducting a comprehensive performance test and submitting a notification of compliance under 40 CFR sections 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE), the requirements of this subsection do not apply. The requirements of this subsection do apply, however, if the department determines certain provisions are necessary to ensure compliance with subdivision a of subsection 5 of section 33.1-24-05-527 and paragraph 3 of subdivision b of subsection 5 of section 33.1-24-05-527 if the permittee elects to comply with paragraph 1 of subdivision a of subsection 1 of section 33.1-24-06-100 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events; or if the permittee is an area source and elects to comply with the sections 33.1-24-05-530, 33.1-24-05-531, and 33.1-24-05-532 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and nonmercury metals; or the department determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with subsections 11 and 12 of section 33.1-24-06-01 and subdivisions b and c of subsection 2 of section 33.1-24-06-05.

   a. General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of section 33.1-24-05-528) are subject to subdivisions b through f. Boilers and industrial furnaces operating under the interim status standards of section 33.1-24-05-528 are subject to subdivision g.

   b. Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

      (1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed seven hundred twenty hours operating time when burning hazardous waste, the department must establish in the pretrial burn period of the permit conditions, including allowable hazardous waste feed rates and operating conditions. The department may extend the duration of this operational period once, for up to seven hundred twenty additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to section 33.1-24-06-14.

         (a) Applicants must submit a statement, with part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of sections 33.1-24-05-529 through 33.1-24-05-532 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in subsection 5 of section 33.1-24-05-527.

         (b) The department will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this

period sufficient to meet the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532 based on the department's engineering judgment.

(2) Trial burn period. For the duration of the trial burn, the department must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532 and determining adequate operating conditions under subsection 5 of section 33.1-24-05-527. Applicants must propose a trial burn plan, prepared under subdivision c, to be submitted with part B of the permit application.

(3) Posttrial burn period.

(a) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the department to reflect the trial burn results, the department will establish the operating requirements most likely to ensure compliance with the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532 based on the department's engineering judgment.

(b) Applicants must submit a statement, with part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532. This statement should include, at a minimum, restrictions on the operating requirements provided by subsection 5 of section 33.1-24-05-527.

(c) The department will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532 based on the department's engineering judgment.

(4) Final permit period. For the final period of operation, the department will develop operating requirements in conformance with subsection 5 of section 33.1-24-05-527 that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532. Based on the trial burn results, the department shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to section 33.1-24-06-14.

c. Requirements for trial burn plans. The trial burn plan must include the following information. The department, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this subdivision:

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feedstocks, as fired, that includes:

(a) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash; and

(b) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(a) An identification of any hazardous organic constituents listed in appendix V of chapter 33.1-24-02, that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix V of chapter 33.1-24-02 that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques.

(b) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods.

(c) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(3) A detailed engineering description of the boiler or industrial furnace, including:

(a) Manufacturer's name and model number of the boiler or industrial furnace;

(b) Type of boiler or industrial furnace;

(c) Maximum design capacity in appropriate units;

(d) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(e) Capacity of hazardous waste feed system;

(f) Description of automatic hazardous waste feed cutoff systems;

(g) Description of any air pollution control system; and

(h) Description of stack gas monitoring and any pollution control monitoring systems.

(4) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including dates, duration, quantity of hazardous waste to be burned, and other factors relevant to the department's decision under paragraph 2 of subdivision b.

(6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in sections 33.1-24-05-529 through 33.1-24-05-532.

(7) A description of, and planned operating conditions for, any emission control equipment that will be used.

(8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(9) Such other information as the department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this subdivision and the criteria in paragraph 2 of subdivision b.

d. Trial burn procedures.

(1) A trial burn must be conducted to demonstrate conformance with the standards of sections 33.1-24-05-529 through 33.1-24-05-532 under an approved trial burn plan.

(2) The department shall approve a trial burn plan if the department finds that:

(a) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532;

(b) The trial burn itself will not present an imminent hazard to human health and the environment;

(c) The trial burn will help the department to determine operating requirements to be specified under subsection 5 of section 33.1-24-05-527; and

(d) The information sought in the trial burn cannot reasonably be developed through other means.

(3) The department must send a notice to all persons on the facility mailing list as set forth in subdivision a of subsection 3 of section 33.1-24-07-06 and to the appropriate units of local government as set forth in subdivision b of subsection 3 of section 33.1-24-07-06 announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the department has issued such notice. This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the department. This notice must contain:

(a) The name and telephone number of the applicant's contact person;

(b) The name and telephone number of the department contact;

(c) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(d) An expected time period for commencement and completion of the trial burn.

(4) The applicant must submit to the department a certification that the trial burn has been carried out in accordance with the approved trial burn plan and must submit the results of all the determinations required in subdivision c. This submission shall be made within ninety days of completion of the trial burn, or later if approved by the department.

(5) All data collected during any trial burn must be submitted to the department following completion of the trial burn.

(6) All submissions required by this subdivision must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 33.1-24-06-03.

e. Special procedures for destruction and removal efficiency trial burns. When a destruction and removal efficiency trial burn is required under subsection 1 of section

33.1-24-05-529, the department will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial principal organic hazardous constituents those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial principal organic hazardous constituents will be specified by the department based on information, including the department's estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in sections 33.1-24-02-15 through 33.1-24-02-19, the hazardous waste organic constituent or constituents identified in appendix IV of chapter 33.1-24-02 as the basis for listing.

f. Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(2) When a destruction and removal efficiency trial burn is required under subsection 1 of section 33.1-24-05-529:

(a) A quantitative analysis of the trial principal organic hazardous constituents in the hazardous waste feed;

(b) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial principal organic hazardous constituents; and

(c) A computation of destruction and removal efficiency, in accordance with the destruction and removal efficiency formula specified in subsection 1 of section 33.1-24-05-529;

(3) When a trial burn for chlorinated dioxins and furans is required under subsection 5 of section 33.1-24-05-529, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(4) When a trial burn for particulate matter, metals, hydrogen chloride or chlorine is required under section 33.1-24-05-530, subsection 3 or 4 of section 33.1-24-05-531, or subdivision b of subsection 2 or subsection 3 of section 33.1-24-05-532, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride and chlorine, and computations showing conformance with the applicable emission performance standards;

(5) When a trial burn for destruction and removal efficiency, metals, or hydrogen chloride or chlorine is required under subsection 1 of section 33.1-24-05-529, subsection 3 or 4 of section 33.1-24-05-531, or subdivision b of subsection 2 or subsection 3 of section 33.1-24-05-532, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial principal organic hazardous constituents, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide, oxygen, and where required, hydrocarbons, in the stack gas; and

(8) Such other information as the department may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in sections 33.1-24-05-529 through 33.1-24-05-532 and to establish the operating conditions required by subsection 5 of section 33.1-24-05-527 as necessary to meet those performance standards.

g. Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of sections 33.1-24-05-529 through 33.1-24-05-532 and of determining adequate operating conditions under section 33.1-24-05-528, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of section 33.1-24-05-528 must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this subsection or submit other information as specified in subparagraph f of paragraph 1 of subdivision ff of subsection 2 of section 33.1-24-06-17. The department must announce its intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph 3 of subdivision d. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of the department contact; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for department approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in subdivision f with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the department to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the department.

5. **Remedial action plans.** Remedial action plans (RAPs) are special forms of permits that are regulated under sections 33.1-24-06-30 through 33.1-24-06-35.

6. **Hazardous waste standardized permits.** Standardized permits are special forms of permits for treatment, storage, or disposal owners or operators that:

a. Generate hazardous waste and then nonthermally treat or store the hazardous waste onsite in tanks, containers, or containment buildings; or

b. Receive hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then store or nonthermally treat the hazardous waste in containers, tanks, or containment buildings. Standardized permit facility owners or operators are regulated under sections 33.1-24-06-45 through 33.1-24-06-85, 33.1-24-07-40 through 33.1-24-07-54, and 33.1-24-05-950 through 33.1-24-05-1149.

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, 23.1-04-08, 23.1-04-15; S.L. 2017, ch. 199, § 19

33.1-24-06-20. Research, development, and demonstration permits.

1. The department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under sections 33.1-24-05-01 through

33.1-24-05-249, 33.1-24-05-300 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-929. Any such permit must include such terms and conditions as will assure protection of human health and the environment. Such permits:

a. Must provide for the construction of such facilities as necessary, and for operation of a facility for not longer than one year unless renewed as provided in subsection 4;

b. Must provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the department deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology on human health and the environment; and

c. Must include such requirements as the department deems necessary to protect human health and the environment, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the department deems necessary regarding testing and providing of information to the department with respect to the operation of the facility.

2. For the purpose of expediting review and issuance of permits under this section, the department may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in chapters 33.1-24-06 and 33.1-24-07 except that there may be no modification or waiver of regulations regarding financial responsibility, including insurance or of procedures regarding public participation.

3. The department may order an immediate termination of all operations at the facility at any time the department determines that termination is necessary to protect human health and the environment.

4. Any permit issued under this section may be renewed not more than three times. Each such renewal is for a period of not more than 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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-21. Fees.

The department may assess and collect reasonable fees for activities associated with permit applications, and for the issuance, modification, revocation and reissuance, termination, renewal, and transfer of 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, 23.1-04-08, 23.1-04-09; S.L. 2017, ch. 199, § 19

33.1-24-06-22. [Reserved].

33.1-24-06-23. [Reserved].

33.1-24-06-24. [Reserved].

33.1-24-06-25. [Reserved].

33.1-24-06-26. [Reserved].

33.1-24-06-27. [Reserved].

33.1-24-06-28. [Reserved].

33.1-24-06-29. [Reserved].

33.1-24-06-30. Remedial action plans - General information.

1. General information.

   a. A remedial action plan is a special form of hazardous waste permit that an owner or operator may obtain, instead of a permit issued under sections 33.1-24-06-01 through 33.1-24-06-15, 33.1-24-06-17, 33.1-24-06-18, subsections 1 through 4 of section 33.1-24-06-19, and section 33.1-24-06-20, to authorize the owner or operator to treat, store, or dispose of hazardous remediation waste (as defined in section 33.1-24-01-04) at a remediation waste management site. A remedial action plan may only be issued for the area of contamination where the remediation wastes to be managed under the remedial action plan originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under subsection 1 of section 33.1-24-06-35.

   b. The requirements in sections 33.1-24-06-01 through 33.1-24-06-15, 33.1-24-06-17, 33.1-24-06-18, subsections 1 through 4 of section 33.1-24-01-19, and section 33.1-24-06-20 do not apply to remedial action plans unless those requirements for traditional hazardous waste permits are specifically required under sections 33.1-24-06-30 through 33.1-24-06-35.

   c. Notwithstanding any other provision of chapter 33.1-24-06 or 33.1-24-07, any document that meets the requirements in this section constitutes a hazardous waste permit under North Dakota Century Code section 23.1-04-08.

   d. A remedial action plan may be:

      (1) A stand-alone document that includes only the information and conditions required by sections 33.1-24-06-30 through 33.1-24-06-35; or

      (2) Part or parts of another document that includes information or conditions, or both, for other activities at the remediation waste management site, in addition to the information and conditions required by sections 33.1-24-06-30 through 33.1-24-06-35.

   e. If the owner or operator is treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by federal or state cleanup authorities, the remedial action plan does not affect the owner's or operator's obligations under those authorities in any way.

   f. If the owner or operator receives a remedial action plan at a facility operating under interim status, the remedial action plan does not terminate interim status.

2. A remedial action plan is necessary when:

   a. Whenever the owner or operator treats, stores, or disposes of hazardous remediation wastes in a manner that requires a hazardous waste permit, the owner or operator must either obtain:

(1) A hazardous waste permit according to sections 33.1-24-06-01 through 33.1-24-06-15, 33.1-24-06-17, 33.1-24-06-18, subsections 1 through 4 of section 33.1-24-06-19, and section 33.1-24-06-20; or

(2) A remedial action plan according to sections 33.1-24-06-30 through 33.1-24-06-35.

b. Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for remedial action plans under sections 33.1-24-06-30 through 33.1-24-06-35.

c. The owner or operator may obtain a remedial action plan for managing hazardous remediation waste at an already permitted hazardous waste facility. The owner or operator must have these remedial action plans approved as a modification to an existing permit according to the requirements of section 33.1-24-06-12 or 33.1-24-06-14 instead of the requirements in sections 33.1-24-06-30 through 33.1-24-06-35. When the owner or operator submits an application for such a modification, however, the information requirements in paragraph 1 of subdivision a of subsection 1, paragraph 4 of subdivision a of subsection 2, and paragraph 4 of subdivision a of subsection 3 of section 33.1-24-06-14 do not apply; instead, the owner or operator must submit the information required under subsection 4 of section 33.1-24-06-31. When the permit is modified, the remedial action plan becomes part of the hazardous waste permit. Therefore, when a permit (including the remedial action plan portion) is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in sections 33.1-24-06-11, 33.1-24-06-12, and 33.1-24-06-14, revoked and reissued according to the applicable requirements in sections 33.1-24-06-12 and 33.1-24-06-13, terminated according to the applicable requirements in section 33.1-24-06-13, and expire according to the applicable requirements in sections 33.1-24-06-02 and 33.1-24-06-06.

3. Rights and obligations under a remedial action plan. The provisions of section 33.1-24-06-10 apply to remedial action plans. (Note: The provisions of subsection 1 of section 33.1-24-06-10 provide the owner or operator assurance that, as long as the owner or operator complies with the remedial action plan, the department will consider the owner or operator in compliance with this article and will not take enforcement actions against the owner or operator. However, the owner or operator should be aware of four exceptions to this provision that are listed in section 33.1-24-06-10.)

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, 23.1-04-08, 23.1-04-15; S.L. 2017, ch. 199, § 19

33.1-24-06-31. Remedial action plan application process.

1. To apply for a remedial action plan, the owner or operator must complete an application, sign it, and submit it to the department according to the requirements in sections 33.1-24-06-30 through 33.1-24-06-35.

2. Who applies. When a facility or remediation waste management site is owned by one person, but the treatment, storage, or disposal activities are operated by another person, it is the operator's duty to obtain a remedial action plan, except that the owner must also sign the remedial action plan application.

3. Signatory requirements. Both the owner and the operator must sign the remedial action plan application and any required reports according to subsections 1, 2, and 3 of section 33.1-24-06-03. In the application, both the owner and the operator must also make the certification required under subdivision a of subsection 4 of section 33.1-24-06-03. However, the owner may choose the alternative certification under subdivision b of subsection 4 of

section 33.1-24-06-03 if the operator certifies under subdivision a of subsection 4 of section 33.1-24-06-03.

4. Information to be included in the application. The owner or operator must include the following information in the application for a remedial action plan:

   a. The name, address, and identification number of the remediation waste management site;

   b. The name, address, and telephone number of the owner and operator;

   c. The latitude and longitude of the site;

   d. The United States geological survey or county map showing the location of the remediation waste management site;

   e. A scaled drawing of the remediation waste management site showing:

      (1) The remediation waste management site boundaries;

      (2) Any significant physical structures; and

      (3) The boundary of all areas onsite where remediation waste is to be treated, stored, or disposed;

   f. A specification of the hazardous remediation waste to be treated, stored, or disposed of at the facility or remediation waste management site. This must include information on:

      (1) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated or otherwise managed;

      (2) An estimate of the quantity of these wastes; and

      (3) A description of the processes the owner or operator will use to treat, store, or dispose of this waste, including technologies, handling systems, and design and operating parameters the owner or operator will use to treat hazardous remediation wastes before disposing of them according to the land disposal restrictions standards of sections 33.1-24-05-250 through 33.1-24-05-299, as applicable;

   g. Enough information to demonstrate that operations that follow the provisions in the remedial action plan application will ensure compliance with applicable requirements of sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929;

   h. Such information as may be necessary to enable the department to carry out the department's duties under other federal or other state laws as is required for traditional hazardous waste permits under subdivision r of subsection 2 of section 33.1-24-06-17; and

   i. Any other information the department decides is necessary for demonstrating compliance with sections 33.1-24-06-30 through 33.1-24-06-35 or for determining any additional remedial action plan conditions that are necessary to protect human health and the environment.

5. Confidentiality of remedial action plan information. The owner or operator may assert any such claim at the time that the owner or operator submits the remedial action plan application or other submissions by stamping the words "confidential business information" on each page containing such information. If the owner or operator asserts a claim at the time of the

submission, the department will treat the information as confidential and will not release this information to the public. If the owner or operator does not assert a claim at the time of the submission, the department may make the information available to the public without further notice to the owner or operator. The department will deny any requests for confidentiality of an owner's or operator's name or address, or both.

6. The owner or operator must submit the completed, signed application for a remedial action plan to the department for approval.

7. If the owner or operator submits an application for a remedial action plan as a part of another document, the owner or operator must clearly identify the components of that document that constitute the remedial action plan application.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-32. Remedial action plan approval process.

1. Completeness and technical review. The department will not issue a permit before receiving a complete application for a remedial action plan. An application for a remedial action plan is complete when the department receives an application form and any supplemental information which is completed to the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in subsection 10 of section 33.1-24-06-01. The department may deny a permit for a remedial action plan before receiving a complete application for a permit.

   a. If the department tentatively finds that a remedial action plan application includes all of the information required by subsection 4 of section 33.1-24-06-31 and that the proposed remediation waste management activities meet the regulatory standards, the department may make a tentative decision to approve the remedial action plan application. The department will then prepare a draft remedial action plan and provide an opportunity for public comment before making a final decision on the remedial action plan application, according to sections 33.1-24-06-30 through 33.1-24-06-35.

   b. If the department tentatively finds that the remedial action plan application does not include all of the information required by subsection 4 of section 33.1-24-06-31 or that the proposed remediation waste management activities do not meet the regulatory standards, the department may request additional information or ask the owner or operator to correct deficiencies in the application. If the owner or operator fails or refuses to provide any additional information the department requests, or to correct any deficiencies in the remedial action plan application, the department may make a tentative decision to deny the remedial action plan application. After making this tentative decision, the department will prepare a notice of intent to deny the remedial action plan application ("notice of intent to deny") and provide an opportunity for public comment before making a final decision on the remedial action plan application, according to the requirements in sections 33.1-24-06-30 through 33.1-24-06-35. The department may deny the remedial action plan application either in its entirety or in part.

2. Contents of the draft remedial action plan. If the department prepares a draft remedial action plan, the department must include the following information:

   a. Information required under subdivisions a through f of subsection 4 of section 33.1-24-06-31;

b. The following terms and conditions:

(1) Terms and conditions necessary to ensure that the operating requirements specified in the remedial action plan comply with applicable requirements of sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929 (including any recordkeeping and reporting requirements). In satisfying this provision, the department may incorporate, expressly or by reference, applicable requirements of sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929 into the remedial action plan or establish site-specific conditions as required or allowed by sections 33.1-24-05-01 through 33.1-24-05-559 and 33.1-24-05-800 through 33.1-24-05-929;

(2) Terms and conditions in section 33.1-24-06-04;

(3) Terms and conditions for modifying, revoking and reissuing, and terminating the remedial action plan, as provided in subsection 1 of section 33.1-24-06-33; and

(4) Any additional terms or conditions that the department determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the remedial action plan; and

c. If the draft remedial action plan is part of another document, as described in paragraph 2 of subdivision d of subsection 1 of section 33.1-24-06-30, the department must clearly identify the components of that document that constitute the draft remedial action plan.

3. Once the department has prepared the draft remedial action plan or notice of intent to deny, then the department must also prepare the following documents:

a. A fact sheet that briefly describes the derivation of the conditions of the draft remedial action plan and the reasons for them, or the rationale for the notice of intent to deny;

b. The following documentation, including:

(1) The remedial action plan application, and any supporting data furnished by the applicant;

(2) The draft remedial action plan or notice of intent to deny;

(3) The fact sheet and all documents cited therein (material readily available at the department or published material that is generally available need not be physically included, as long as it is specifically referred to in the fact sheet); and

(4) Any other documents that support the decision to approve or deny the remedial action plan; and

c. Information contained in subdivision b must be available for review by the public upon request.

4. Procedures for public comment.

a. The department must:

(1) Send notice to the owner or operator of the intention to approve or deny the remedial action plan application and send the owner or operator a copy of the fact sheet;

(2) Publish a notice of the intention to approve or deny the remedial action plan application in a major local newspaper of general circulation;

(3) Broadcast the intention to approve or deny the remedial action plan application over a local radio station; and

(4) Send a notice of the intention to approve or deny the remedial action plan application to each unit of local government having jurisdiction over the area in which the site is located, and to each state agency having any authority under state law with respect to any construction or operations at the site.

b. The notice required by subdivision a must provide an opportunity for the public to submit written comments on the draft remedial action plan or notice of intent to deny within at least forty-five days.

c. The notice required by subdivision a must include:

(1) The name and address of the office processing the remedial action plan application;

(2) The name and address of the remedial action plan applicant, and if different, the remediation waste management site or activity the remedial action plan will regulate;

(3) A brief description of the activity the remedial action plan will regulate;

(4) The name, address, and telephone number of the department's person from whom interested persons may obtain further information, including copies of the draft remedial action plan or notice of intent to deny, fact sheet, and the remedial action plan application;

(5) A brief description of the comment procedures in this subsection, and any other procedures by which the public may participate in the remedial action plan decision;

(6) If a hearing is scheduled, the date, time, location, and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

(8) The location of additional information and times when it will be open for public inspection; and

(9) Any additional information the department considers necessary or proper.

d. If, within the comment period, the department receives written notice of opposition to the intention to approve or deny the remedial action plan application and a request for a hearing, the department must hold an informal public hearing to discuss issues relating to the approval or denial of the remedial action plan application. The department may also determine on the department's own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the department must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in subdivision a. This notice must, at a minimum, include the information required by subdivision c and:

(1) Reference to the date of any previous public notices relating to the remedial action plan application;

(2) The date, time, and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

5. Basis for final decision.

   a. The department must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft remedial action plan or notice of intent to deny, and revise the draft remedial action plan based on those comments, as appropriate.

   b. If the department determines that the remedial action plan includes the information and terms and conditions required in subsection 2, then the department will issue a final decision approving the remedial action plan and, in writing, notify the owner or operator and all commenters on the draft remedial action plan that the remedial action plan application has been approved.

   c. If the department determines that the remedial action plan does not include the information required in subsection 2, then the department will issue a final decision denying the remedial action plan and, in writing, notify the owner or operator and all commenters on the draft remedial action plan that the remedial action plan application has been denied.

   d. If the department's final decision is that the tentative decision to deny the remedial action plan application was incorrect, the department will withdraw the notice of intent to deny and proceed to prepare a draft remedial action plan, according to the requirements in sections 33.1-24-06-30 through 33.1-24-06-35.

   e. When the department issues a final remedial action plan decision, the final decision must refer to the procedures for appealing the decision under subsection 6.

   f. The department shall maintain the following documents:

      (1) All comments received during the public comment period;

      (2) Tapes or transcripts of any hearings;

      (3) Any written materials submitted at these hearings;

      (4) The responses to comments;

      (5) Any new material placed in the record since the draft remedial action plan was issued;

      (6) Any other documents supporting the remedial action plan; and

      (7) A copy of the final remedial action plan.

   g. The department must make information available for review by the public upon request.

6. Administrative appeal process of the department's decision to approve or deny a remedial action plan application.

   a. Any commenter on the draft remedial action plan or notice of intent to deny, or any participant in any public hearing on the draft remedial action plan, may appeal the department's decision to approve or deny the remedial action plan application. Any person who did not file comments, or did not participate in any public hearing on the draft remedial action plan, may petition for administrative review only to the extent of the changes from the draft to the final remedial action plan decision. Appeals of remedial

action plans may be made to the same extent as for final permit decisions under section 33.1-24-07-11. Instead of the notice required under subsection 3 of section 33.1-24-07-14, and section 33.1-24-07-06, the department will give public notice of any grant of review of remedial action plans through the same means used to provide notice under subsection 4 of section 33.1-24-06-32. The notice will include:

(1) The briefing schedule for the appeal as provided by the department;

(2) A statement that any interested person may file an amicus brief with the department; and

(3) The information specified in subdivision c of subsection 4, as appropriate.

b. This appeal is a prerequisite to seeking judicial review of these department actions.

7. Effective date of a remedial action plan. A remedial action plan becomes effective thirty days after the department notifies the owner or operator and all commenters that the remedial action plan is approved unless:

a. The department specifies a later effective date in the final decision;

b. The owner or operator or another person has appealed the remedial action plan under subsection 6 (if the remedial action plan is appealed, and the request for review is granted under subsection 6, conditions of the remedial action plan are stayed according to section 33.1-24-07-12); or

c. No commenters requested a change in the draft remedial action plan, in which case the remedial action plan becomes effective immediately when it is issued.

8. The owner or operator may not begin physical construction of new units permitted under the remedial action plan for treating, storing, or disposing of hazardous remediation waste before receiving a finally effective remedial action plan.

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, 23.1-04-08, 23.1-04-15; S.L. 2017, ch. 199, § 19

33.1-24-06-33. Modification, revocation, and reissuance or termination of a remedial action plan.

1. In the remedial action plan, the department must specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of the remedial action plan. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change the management of the remediation waste, or that otherwise merits public review and comment. If the remedial action plan has been incorporated into a traditional hazardous waste permit, as allowed under subdivision c of subsection 2 of section 33.1-24-06-30, then the remedial action plan will be modified according to the applicable requirements in sections 33.1-24-06-11, 33.1-24-06-12, and 33.1-24-06-14, revoked and reissued according to the applicable requirements in sections 33.1-24-06-12 and 33.1-24-06-13, or terminated according to the applicable requirements of section 33.1-24-06-13.

2. Modifications by the department.

a. The department may modify the final remedial action plan on the department's own initiative only if one or more of the following reasons exist. If one or more of these

reasons do not exist, then the department will not modify the final remedial action plan, except at the request of the owner or operator. Reasons for modification are:

(1) The owner or operator made material and substantial alterations or additions to the activity that justify applying different conditions;

(2) The department finds new information that was not available at the time of remedial action plan issuance and would have justified applying different remedial action plan conditions at the time of issuance;

(3) The standards or regulations on which the remedial action plan was based have changed because of new or amended statutes, standards, or regulations, or by judicial decision after the remedial action plan was issued;

(4) If the remedial action plan includes any schedules of compliance, the department may find reasons to modify the compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the owner or operator have little or no control and for which there is no reasonably available remedy;

(5) The owner or operator is not in compliance with conditions of the remedial action plan;

(6) The owner or operator failed in the application or during the remedial action plan issuance process to disclose fully all relevant facts, or the owner or operator misrepresented any relevant facts at the time;

(7) The department has determined that the activity authorized by the remedial action plan endangers human health or the environment and can only be remedied by modifying; or

(8) The owner or operator have notified the department (as required in the remedial action plan under subdivision c of subsection 12 of section 33.1-24-06-04) of a proposed transfer of a remedial action plan.

b. Notwithstanding any other provision in this subsection, when the department reviews a remedial action plan for a land disposal facility under subsection 6, the department may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in chapters 33.1-24-01 through 33.1-24-04, 33.1-24-06, 33.1-24-07, sections 33.1-24-05-01 through 33.1-24-05-249, 33.1-24-05-300 through 33.1-24-05-559, and 33.1-24-05-800 through 33.1-24-05-929.

c. The department will not reevaluate the suitability of the facility location at the time of remedial action plan modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the remedial action plan was issued.

3. Revocation and reissuance of a remedial action plan.

a. The department may revoke and reissue the final remedial action plan on the department's own initiative only if one or more reasons for revocation and reissuance exist. If one or more reasons do not exist, then the department will not modify or revoke and reissue the final remedial action plan, except at the request of the owner or operator. Reasons for modification or revocation and reissuance are the same as the reasons listed for remedial action plan modifications in paragraphs 5 through 8 of subdivision a of subsection 2 if the department determines that revocation and reissuance of the remedial action plan is appropriate.

b. The department will not reevaluate the suitability of the facility location at the time of remedial action plan revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the remedial action plan was issued.

4. Termination or denial of a renewal application of a remedial action plan. The department may terminate the final remedial action plan on the department's own initiative, or deny the renewal application for the same reasons as those listed for remedial action plan modifications in paragraphs 5 through 7 of subdivision a of subsection 2 if the department determines that termination of the remedial action plan or denial of the remedial action plan renewal application is appropriate.

5. Administrative appeal of a decision to deny a modification, revocation and reissuance, or termination of a remedial action plan.

   a. Any commenter on the modification, revocation and reissuance, or termination, or any person who participated in any hearing on these actions, may appeal the department's decision to approve a modification, revocation and reissuance, or termination of the remedial action plan, according to subsection 6 of section 33.1-24-06-32. Any person who did not file comments or did not participate in any public hearing on the modification, revocation and reissuance, or termination may petition for administrative review only of the changes from the draft to the final remedial action plan decision.

   b. Any commenter on the modification, revocation and reissuance, or termination, or any person who participated in any hearing on these actions, may informally appeal the department's decision to deny a request for modification, revocation and reissuance, or termination to the department. Any person who did not file comments, or did not participate in any public hearing on the modification, revocation and reissuance, or termination may petition for administrative review only of the changes from the draft to the final remedial action plan decision.

   c. The process for informal appeals of remedial action plans is as follows:

      (1) The person appealing the decision must send a letter to the department. The letter must briefly set forth the relevant facts.

      (2) The department has sixty days after receiving the letter to act on it.

      (3) If the department does not take action on the letter within sixty days after receiving it, the appeal shall be considered denied.

   d. This informal appeal is a prerequisite to seeking judicial review of these department actions.

6. Expiration of a remedial action plan. Remedial action plans are effective for a fixed term of five years. Every five years any remedial action plan for hazardous waste land disposal must be modified as necessary to assure that the owner or operator continues to comply with currently applicable requirements in North Dakota Century Code sections 23.1-04-05 and 23.1-04-08, and take into account improvements in technology as well as applicable rules.

7. Renewal. Any facility with an effective remedial action plan shall submit a new application at least one hundred eighty days before the expiration date of the effective remedial action plan unless permission for a later date has been granted by the department (the department shall not grant permission for applications to be submitted later than the expiration date of the existing remedial action plan). The owner or operator must follow the process for application and issuance of remedial action plans in sections 33.1-24-06-30 through 33.1-24-06-35.

8. Continuance of an expiring remedial action plan. The conditions of an expired remedial action plan continue in force until the effective date of a new remedial action plan if:

   a. The owner or operator has submitted a timely application which is a complete application for a new remedial action plan; and

   b. The department, through no fault of the owner or operator, does not issue a new remedial action plan with an effective date on or before the expiration date of the previous remedial action plan (for example, when issuance is impractical due to time or resource constraints) or the denial of the remedial action plan application.

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, 23.1-04-08, 23.1-04-15; S.L. 2017, ch. 199, § 19

33.1-24-06-34. Remedial action plan operations.

1. **Recordkeeping requirements.** The owner or operator is required to keep records of:

   a. All data used to complete remedial action plan applications and any supplemental information that the owner or operator submits for a period of at least three years from the date the application is signed; and

   b. Any operating records and other records the department requires the owner or operator to maintain as a condition of the remedial action plan.

2. **Time period computation.**

   a. Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. (For example, if the remedial action plan specifies that the owner or operator must close a staging pile within one hundred eighty days after the operating term for that staging pile expires, and the operating term expires on June first, then June second counts as day one of the one hundred eighty days, and the owner or operator would have to complete closure by November twenty-eighth.)

   b. Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. (For example, if the owner or operator is transferring ownership or operational control of the site, and transfers the remedial action plan to the new owner or operator, the new owner or operator must submit a revised remedial action plan application no later than ninety days before the scheduled change. Therefore, if the owner or operator plans to change ownership on January first, the new owner or operator must submit the revised remedial action plan application no later than October third, so that the ninetieth day would be December thirty-first.)

   c. If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day. (For example, if the owner or operator wishes to appeal the department's decision to modify the remedial action plan, then the owner or operator must petition the department within thirty days after the department has issued the final remedial action plan decision. If the thirtieth day falls on Sunday, then the owner or operator may submit the appeal by the Monday after. If the thirtieth day falls on July fourth, then the owner or operator may submit the appeal by July fifth.)

   d. Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon them by mail, three days must be added to the prescribed term. (For example, if the owner or operator wishes to appeal the department's decision to modify the remedial action plan, then the owner or

operator must petition the department within thirty days after the department has issued the final remedial action plan decision. However, if the department notifies the owner or operator of the decision by mail, then the owner or operator may have thirty-three days to petition the department.)

3. **Transfer of a remedial action plan to a new owner or operator.**

   a. An owner or operator may transfer the remedial action plan to a new owner or operator, provided the owner or operator follows the requirements specified in the remedial action plan for modification to identify the new owner or operator, and incorporate any other necessary requirements with prior approval of the department. These modifications do not constitute "significant" modifications for purposes of subsection 1 of section 33.1-24-05-33. The new owner or operator must submit a revised remedial action plan application no later than ninety days before the scheduled change along with a written agreement containing a specific date for transfer of remedial action plan responsibility between the owner or operator and the new owner or operator.

   b. When a transfer of ownership or operational control occurs, the owner or operator as the old owner or operator must comply with the applicable requirements in sections 33.1-24-05-74 through 33.1-24-05-88 until the new owner or operator has demonstrated compliance with the financial assurance requirements. The new owner or operator must demonstrate compliance with sections 33.1-24-05-74 through 33.1-24-05-88 within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner or operator demonstrates compliance with sections 33.1-24-05-74 through 33.1-24-05-88 to the department, the department will notify the old owner or operator that that person no longer needs to comply with sections 33.1-24-05-74 through 33.1-24-05-88 as of the date of demonstration.

4. **Noncompliance and program reporting by the department.** The department must report noncompliance with remedial action plans according to the provisions of section 33.1-24-06-15.

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, 23.1-04-08, 23.1-04-15; S.L. 2017, ch. 199, § 19

33.1-24-06-35. Remedial action plans for offsite locations.

For offsite locations:

1. The owner or operator may request a remedial action plan for remediation waste management activities at a location removed from the area where the remediation wastes originated if the owner or operator believes such a location would be more protective than the contaminated area or areas in close proximity.

2. If the department determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the department may approve a remedial action plan for this alternative location.

3. The owner or operator must request the remedial action plan, and the department will approve or deny the remedial action plan, according to the procedures and requirements in sections 33.1-24-06-30 through 33.1-24-06-35.

4. A remedial action plan for an alternative location must also meet the following requirements, which the department must include in the remedial action plan for such locations:

a. The remedial action plan for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;

b. The remedial action plan is subject to the expanded public participation requirements in sections 33.1-24-07-25 through 33.1-24-07-27; and

c. The remedial action plan is subject to the public notice requirements in subsection 3 of section 33.1-24-07-06.

5. These alternative locations are remediation waste management sites and retain the following benefits of remediation waste management sites:

a. Exclusion from facilitywide corrective action under section 33.1-24-05-58; and

b. Application of subsection 10 of section 33.1-24-05-01 in lieu of sections 33.1-24-05-02 through 33.1-24-05-36.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-36. [Reserved].

33.1-24-06-37. [Reserved].

33.1-24-06-38. [Reserved].

33.1-24-06-39. [Reserved].

33.1-24-06-40. [Reserved].

33.1-24-06-41. [Reserved].

33.1-24-06-42. [Reserved].

33.1-24-06-43. [Reserved].

33.1-24-06-44. [Reserved].

33.1-24-06-45. Standardized permit - General information.

A hazardous waste standardized permit is a special type of permit that authorizes an owner or operator to manage hazardous waste. A standardized permit is 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.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-46. [Reserved].

33.1-24-06-47. [Reserved].

33.1-24-06-48. Eligibility for a standardized permit.

1. The owner or operator may be eligible for a standardized permit if the facility:

   a. Generates hazardous waste and then stores or nonthermally treats the hazardous waste onsite in containers, tanks, or containment buildings; or

   b. Receives hazardous waste generated offsite by a generator under the same ownership as the receiving facility, and then stores or nonthermally treats the hazardous waste in containers, tanks, or containment buildings.

   c. The department will inform the owner or operator of eligibility when a decision is made on the permit application.

2. [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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-49. [Reserved].

33.1-24-06-50. [Reserved].

33.1-24-06-51. [Reserved].

33.1-24-06-52. Conditions applicable to a standardized permit.

The following requirements of chapter 33.1-24-06 apply to a standardized permit:

1. Sections 33.1-24-06-01, 33.1-24-06-09, 33.1-24-06-10, 33.1-24-06-15, 33.1-24-01-04, and subdivision a of subsection 3 of section 33.1-24-01-05.

2. Section 33.1-24-06-03, subsection 2 of section 33.1-24-06-13, and subsection 1 of section 33.1-24-06-17, and 33.1-24-01-16.

3. Sections 33.1-24-06-04, 33.1-24-06-05, 33.1-24-06-07, and 33.1-24-06-08.

4. Sections 33.1-24-06-11, 33.1-24-06-12, and subsection 1 of section 33.1-24-06-13.

5. Sections 33.1-24-06-02 and 33.1-24-06-06.

6. Subsection 6 of section 33.1-24-06-19.

7. Section 33.1-24-06-16.

8. Sections 33.1-24-06-45 through 33.1-24-06-85.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-53. [Reserved].

33.1-24-06-54. [Reserved].

33.1-24-06-55. [Reserved].

33.1-24-06-56. Standardized permit application process.

To apply for a standardized permit, the owner or operator must follow the procedures in 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.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-57. Standardized permit application.

The information in subsections 1 through 10 will be the basis of the standardized permit application. This information must be submitted to the department when submitting a notice of intent under subsection 2 of section 33.1-24-07-42 requesting coverage under a hazardous waste standardized permit:

1. The part A information described in subsection 1 of section 33.1-24-06-17.
2. A meeting summary and other materials required by section 33.1-24-07-25.
3. Documentation of compliance with the location standards of section 33.1-24-05-968.
4. Information that allows the department to carry out obligations under other state and federal laws required in section 33.1-24-06-09.
5. Solid waste management unit information required by subsection 4 of section 33.1-24-06-17.
6. A certification meeting the requirements of section 33.1-24-06-62, and an audit of the facility's compliance status with sections 33.1-24-05-950 through 33.1-24-05-1149 as required by section 33.1-24-06-62.
7. A closure plan prepared in accordance with sections 33.1-24-05-1040 through 33.1-24-05-1047.
8. The most recent closure cost estimate for the facility prepared under section 33.1-24-05-1062, and a copy of the documentation required to demonstrate financial assurance under section 33.1-24-05-1063. For a new facility, the required documentation must be compiled sixty days before the initial receipt of hazardous wastes.
9. If wastes generated offsite are managed, the waste analysis plan.
10. If waste generated from offsite are managed, documentation showing that the waste generator and the offsite facility are under the same ownership.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-58. [Reserved].

33.1-24-06-59. [Reserved].

33.1-24-06-60. [Reserved].

33.1-24-06-61. [Reserved].

33.1-24-06-62. Certification requirements.

A signed certification based on an audit of the facility's compliance with sections 33.1-24-05-950 through 33.1-24-05-1149 must be submitted.

1. The certification must read: I certify under penalty of law that:

   a. I have personally examined and am familiar with the report containing the results of an audit conducted of my facility's compliance status with sections 33.1-24-05-950 through 33.1-24-05-1149, which supports this certification. Based on my inquiry of those individuals immediately responsible for conducting the audit and preparing the report, I believe that (include paragraph 1 and 2, whichever applies):

      (1) My existing facility complies with all applicable requirements of sections 33.1-24-05-950 through 33.1-24-05-1149 and will continue to comply until the expiration of the permit; or

      (2) My facility has been designed, and will be constructed and operated to comply with all applicable requirements of sections 33.1-24-05-950 through 33.1-24-05-1149, and will continue to comply until expiration of the permit.

   b. I will make all information that I am required to maintain at my facility by sections 33.1-24-06-65 through 33.1-24-06-80 readily available for review by the department and the public; and

   c. I will continue to make all information required by sections 33.1-24-06-65 through 33.1-24-06-80 available until the permit expires. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

2. This certification must be signed following the requirements of subdivisions a through c of subsection 1 of section 33.1-24-06-03.

3. This certification must be based upon an audit that the owner or operator conducted of the facility's compliance status with sections 33.1-24-05-950 through 33.1-24-05-1149. A written audit report, signed and certified as accurate by the auditor, must be submitted to the department with the subsection 2 of section 33.1-24-07-42 notice of intent.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-63. [Reserved].

33.1-24-06-64. [Reserved].

33.1-24-06-65. Recordkeeping requirements.

The owner or operator must keep the following information at the facility:

1. A general description of the facility.

2. Chemical and physical analyses of the hazardous waste and hazardous debris handled at the facility. At a minimum, these analyses must contain all the information for treating or storing the wastes properly under the requirements of sections 33.1-24-05-950 through 33.1-24-05-1149.

3. A copy of the waste analysis plan required by subsection 2 of section 33.1-24-05-963.

4. A description of the security procedures and equipment required by section 33.1-24-05-964.

5. A copy of the general inspection schedule required by subsection 2 of section 33.1-24-05-965. The inspection schedule must include applicable requirements of sections 33.1-24-05-1084, 33.1-24-05-1103, 33.1-24-05-1105, 33.1-24-05-403, 33.1-24-05-422, 33.1-24-05-423, 33.1-24-05-428, and 33.1-24-05-458.

6. A justification of any modification of the preparedness and prevention requirements of sections 33.1-24-05-980 through 33.1-24-05-986.

7. A copy of the contingency plan required by sections 33.1-24-05-990 through 33.1-24-05-998.

8. A description of procedures, structures, or equipment used at the facility to:

   a. Prevent hazards in unloading operations (for example, use ramps, special forklifts);

   b. Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, with berms, dikes, trenches);

   c. Prevent contamination of water supplies;

   d. Mitigate effects of equipment failure and power outages;

   e. Prevent undue exposure of personnel to hazardous waste (for example, requiring protective clothing); and

   f. Prevent releases to atmosphere.

9. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required by section 33.1-24-05-967.

10. Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes; describe access road surfacing and load bearing capacity; show traffic control signals).

11. [Reserved].

12. An outline of both the introductory and continuing training programs used to prepare employees to operate or maintain the facility safely as required by section 33.1-24-05-966. A brief description of how training will be designed to meet actual job tasks under subdivision b of subsection 1 of section 33.1-24-05-966 requirements.

13. A copy of the closure plan required by section 33.1-24-05-1042. Include, where applicable, as part of the plans, specific requirements in sections 33.1-24-05-1086, 33.1-24-05-1111, and 33.1-24-05-1138.

14. [Reserved].

15. The most recent closure cost estimate for the facility prepared under section 33.1-24-05-1062 and a copy of the documentation required to demonstrate financial assurance under section

33.1-24-05-1063. For a new facility, the required documentation must be compiled sixty days before the initial receipt of hazardous wastes.

16. [Reserved].

17. Where applicable, a copy of the insurance policy or other documentation that complies with the liability requirements of section 33.1-24-05-1067. For a new facility, documentation showing the amount of insurance meeting the specification of subsection 1 of section 33.1-24-05-1067 that is planned to be in effect before initial receipt of hazardous waste for treatment or storage.

18. [Reserved].

19. A topographic map showing a distance of one thousand feet around the facility at a scale of two and one-half centimeters [1 inch] equal to not more than sixty-one meters [200 feet]. The map must show elevation contours. The contour interval must show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of one and one-half meters [5 feet], if relief is greater than six and one-tenth meters [20 feet], or an interval of six-tenths meters [2 feet], if relief is less than six and one-tenth meters [20 feet]. If the facility is in a mountainous area, use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:

    a. Map scale and date;

    b. One hundred-year floodplain area;

    c. Surface waters, including intermittent streams;

    d. Surrounding land uses (residential, commercial, agricultural, recreational);

    e. A wind rose (for example, prevailing wind speed and direction);

    f. Orientation of the map (north arrow);

    g. Legal boundaries of the facility site;

    h. Access control (fences, gates);

    i. Injection and withdrawal wells both onsite and offsite;

    j. Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, runoff control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities);

    k. Barriers for drainage or flood control; and

    l. Location of operational units within the facility, where hazardous waste is (or will be) treated or stored (including equipment cleanup areas).

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-66. [Reserved].

33.1-24-06-67. [Reserved].

33.1-24-06-68. [Reserved].

33.1-24-06-69. [Reserved].

33.1-24-06-70. Information required for containers.

If hazardous waste is stored or treated in containers, the following information must be kept at the facility:

1. A description of the containment system to demonstrate compliance with the container storage area provisions of section 33.1-24-05-1083. This description must show the following:

   a. Basic design parameters, dimensions, and materials of construction;

   b. How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system;

   c. Capacity of the containment system relative to the number and volume of containers to be stored;

   d. Provisions for preventing or managing run-on; and

   e. How accumulated liquids can be analyzed and removed to prevent overflow.

2. For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with subsection 3 of section 33.1-24-05-1083, including:

   a. Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

   b. A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

3. Sketches, drawings, or data demonstrating compliance with section 33.1-24-05-1084 (location of buffer zone (fifteen meters or fifty feet) and containers holding ignitable or reactive wastes) and subsection 3 of section 33.1-24-05-1085 (location of incompatible wastes in relation to each other), where applicable.

4. Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with subsections 1 and 2 of section 33.1-24-05-1085 and subsections 2 and 3 of section 33.1-24-05-967.

5. Information on air emission control equipment as required by section 33.1-24-06-80.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-71. [Reserved].

33.1-24-06-72. [Reserved].

33.1-24-06-73. Information required for tanks.

If hazardous waste is stored or treated in tanks, the following information must be kept at the facility:

1. A written assessment that is reviewed and certified by a qualified professional engineer on the structural integrity and suitability for handling hazardous waste of each tank system, as required under sections 33.1-24-05-1101 and 33.1-24-05-1102.
2. Dimensions and capacity of each tank.
3. Description of feed systems, safety cutoff, bypass systems, and pressure controls (for example, vents).
4. A diagram of piping, instrumentation, and process flow for each tank system.
5. A description of materials and equipment used to provide external corrosion protection, as required under section 33.1-24-05-1101.
6. For new tank systems, a detailed description of how the tank systems will be installed in compliance with sections 33.1-24-05-1102 and 33.1-24-05-1104.
7. Detailed plans and description of how the secondary containment system for each tank system is or will be designed, constructed, and operated to meet the requirements of sections 33.1-24-05-1105 and 33.1-24-05-1106.
8. [Reserved].
9. Description of controls and practices to prevent spills and overflows, as required under section 33.1-24-05-1108.
10. For tank systems in which ignitable, reactive, or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of sections 33.1-24-05-1112 and 33.1-24-05-1113.
11. Information on air emission control equipment as required by section 33.1-24-06-80.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-74. [Reserved].

33.1-24-06-75. [Reserved].

33.1-24-06-76. Information required for equipment.

If the facility has equipment to which sections 33.1-24-05-420 through 33.1-24-05-449 applies, the following information must be kept at the facility:

1. For each piece of equipment to which sections 33.1-24-05-420 through 33.1-24-05-449 applies:
   a. Equipment identification number and hazardous waste management unit identification;
   b. Approximate locations within the facility (for example, identify the hazardous waste management unit on a facility plot plan);

c. Type of equipment (for example, a pump or a pipeline valve);

d. Percent by weight of total organics in the hazardous waste stream at the equipment;

e. Hazardous waste state at the equipment (for example, gas or vapor, or both, or liquid); and

f. Method of compliance with the standard (for example, monthly leak detection and repair, or equipped with dual mechanical seals).

2. For facilities that cannot install a closed-vent system and control device to comply with sections 33.1-24-05-420 through 33.1-24-05-449 on the effective date that the facility becomes subject to sections 33.1-24-05-420 through 33.1-24-05-449 provisions, an implementation schedule as specified in subdivision b of subsection 1 of section 33.1-24-05-403.

3. Documentation that demonstrates compliance with the equipment standards in sections 33.1-24-05-422 and 33.1-24-05-429. This documentation must contain the records required under section 33.1-24-05-434.

4. Documentation to demonstrate compliance with section 33.1-24-05-430 must include the following information:

a. A list of all information references and sources used in preparing the documentation.

b. Records, including the dates, of each compliance test required by subsection 10 of section 33.1-24-05-403.

c. A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference in section 33.1-24-01-05) or other engineering texts acceptable to the department that present basic control device design information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in paragraph 3 of subdivision d of subsection 2 of section 33.1-24-05-405.

d. A statement signed by the owner or operator and dated certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonable expected to occur.

e. A statement signed by the owner or operator and dated certifying that the control device is designed to operate at an efficiency of ninety-five weight percent or greater.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-77. [Reserved].

33.1-24-06-78. [Reserved].

33.1-24-06-79. [Reserved].

33.1-24-06-80. Information required for air emissions control.

If the facility has air emission control equipment subject to sections 33.1-24-05-450 through 33.1-24-05-474, the following information must be kept at the facility:

1. Documentation for each floating roof cover installed on a tank subject to subdivisions a and b of subsection 4 of section 33.1-24-05-454 that includes information the owner or operator prepared or the cover manufacturer or vendor, or both, provided describing the cover design, and the owner's or operator's certification that the cover meets applicable design specifications listed in subdivision a of subsection 5 or subdivision a of subsection 6 of section 33.1-24-05-454.

2. Identification of each container area subject to the requirements of sections 33.1-24-05-450 through 33.1-24-05-474 and the owner's or operator's certification that the requirements of sections 33.1-24-05-450 through 33.1-24-05-474 are met.

3. Documentation for each enclosure used to control air pollutant emissions from tanks or containers under the requirements of subdivision e of subsection 4 of section 33.1-24-05-454 or paragraph 2 of subdivision a of subsection 5 of section 33.1-24-05-456. The owner or operator must include records for the most recent set of calculations and measurements performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

4. [Reserved].

5. Documentation for each closed-vent system and control device installed under the requirements of section 33.1-24-05-457 that includes design and performance information as specified in paragraphs 3 and 4 of subdivision cc of subsection 2 of section 33.1-24-06-17.

6. An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A, and control device monitoring methods. This plan must include the following information--monitoring points, monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-81. [Reserved].

33.1-24-06-82. [Reserved].

33.1-24-06-83. [Reserved].

33.1-24-06-84. [Reserved].

33.1-24-06-85. Permit modification.

The owner or operator can modify a hazardous waste standardized permit by following the procedures found in sections 33.1-24-07-51 through 33.1-24-07-54.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

33.1-24-06-86. [Reserved].

33.1-24-06-87. [Reserved].

33.1-24-06-88. [Reserved].

33.1-24-06-89. [Reserved].

33.1-24-06-90. [Reserved].

33.1-24-06-91. [Reserved].

33.1-24-06-92. [Reserved].

33.1-24-06-93. [Reserved].

33.1-24-06-94. [Reserved].

33.1-24-06-95. [Reserved].

33.1-24-06-96. [Reserved].

33.1-24-06-97. [Reserved].

33.1-24-06-98. [Reserved].

33.1-24-06-99. [Reserved].

33.1-24-06-100. Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.

1. **Facilities with existing permits.**

    a. Revisions to permit conditions after documenting compliance with maximum achievable control technology. The owner or operator of a hazardous waste permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the department address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to subsection 2 of section 33.1-24-05-144 and subsection 2 of section 33.1-24-05-525:

        (1) Retain relevant permit conditions. Under this option, the department will:

(a) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2); and

(b) Limit applicability of those permit conditions only to when the facility is operating under the facility's startup, shutdown, and malfunction plan.

(2) Revise relevant permit conditions.

(a) Under this option, the department will:

[1] Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information, including the source's startup, shutdown, and malfunction plan, design, and operating history.

[2] Retain or add these permit requirements to the permit to apply only when the facility is operating under the facility's startup, shutdown, and malfunction plan.

(b) Changes that may significantly increase emissions.

[1] The permittee must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The permittee must notify the department of such changes within five days of making such changes. The permittee must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

[2] The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

[a] Upon permit renewal, or, if warranted;

[b] By modifying the permit under subsection 1 of section 33.1-24-06-12 or section 33.1-24-06-14.

[c] Remove permit conditions. Under this option:

The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the department under 40 CFR 63.1206(c)(2)(ii)(B); and

The department will remove permit conditions that are no longer applicable according to subsection 2 of section 33.1-24-05-144 and subsection 2 of section 33.1-24-05-525.

b. Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or

hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the department a notification of compliance documenting compliance with the standards of 40 CFR part 63, subpart EEE, may request in the application to reissue the permit for the combustion unit that the department control emissions from startup, shutdown, and malfunction events under any of the following options:

(1) Hazardous waste option A. Under this option, the department will:

(a) Include, in the permit, conditions that ensure compliance with subsections 1 and 3 of section 33.1-24-05-149 or subdivision a of subsection 5 of section 33.1-24-05-527 and paragraph 3 of subdivision b of subsection 5 of section 33.1-24-05-527 to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(b) Specify that these permit requirements apply only when the facility is operating under the facility's startup, shutdown, and malfunction plan; or

(2) Hazardous waste option B.

(a) Under this option, the department will:

[1] Include in the permit conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information, including the source's startup, shutdown, and malfunction plan, design, and operating history; and

[2] Specify that these permit requirements apply only when the facility is operating under the facility's startup, shutdown, and malfunction plan.

(b) Changes that may significantly increase emissions.

[1] The permittee must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The permittee must notify the department of such changes within five days of making such changes. The permittee must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

[2] The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

[a] Upon permit renewal, or, if warranted;

[b] By modifying the permit under subsection 1 of section 33.1-24-06-12 or section 33.1-24-06-14; or

[c] Clean Air Act option. Under this option:

The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the department under 40 CFR 63.1206(c)(2)(ii)(B); and

The department will omit from the permit conditions that are not applicable under subsection 2 of section 33.1-24-05-144 and subsection 2 of section 33.1-24-05-525.

2. **Interim status facilities.**

   a. Interim status operations. In compliance with subsection 5 of section 33.1-24-06-16 and subsection 2 of section 33.1-24-05-525, the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of subsection 5 of section 33.1-24-06-16 or sections 33.1-24-05-191 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, and 33.1-24-05-820 through 33.1-24-05-929 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the department a notification of compliance documenting compliance with the standards of 40 CFR part 63, subpart EEE:

      (1) Hazardous waste option. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of subsection 5 of section 33.1-24-06-16 or sections 33.1-24-05-191 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, and 33.1-24-05-820 through 33.1-24-05-929 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

      (2) Clean Air Act option. Under this option, the owner or operator is exempt from the interim status standards of subsection 5 of section 33.1-24-06-16 or sections 33.1-24-05-191 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, and 33.1-24-05-820 through 33.1-24-05-929 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the department that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the department under 40 CFR 63.1206(c)(2)(ii)(B).

   b. Operations under a subsequent hazardous waste permit. When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of subsection 5 of section 33.1-24-06-16 or sections 33.1-24-05-191 through 33.1-24-05-249, 33.1-24-05-525 through 33.1-24-05-549, and 33.1-24-05-820 through 33.1-24-05-949 submits a hazardous waste permit application, the owner or operator may request that the department control emissions from startup, shutdown, and malfunction events under any of the options provided by subitems a, b, or c of item 2 of subparagraph b of paragraph 2 of subdivision b of subsection 1.

3. **New units.** Hazardous waste incinerator, cement kiln, light weight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to hazardous waste permit requirements after October 12, 2005, must control emissions of toxic compounds during startup, shutdown, and malfunction events, under either of the following options:

   a. Comply with the requirements specified in 40 CFR 63.1206(c)(2); or

b. Request to include in the hazardous waste permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The department will specify that these permit conditions apply only when the facility is operating under the facility's startup, shutdown, and malfunction plan.

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, 23.1-04-08; S.L. 2017, ch. 199, § 19

Appendix I

to Section 33.1-24-06-14 - Classification of Permit Modification

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes.	1
2. Correction of typographical errors.	1
3. Equipment replacement or upgrading with functionally equivalent components (for example, pipes, valves, pumps, conveyors, controls).	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
b. Other changes.	2
5. Schedule of compliance:	
a. Changes in interim compliance dates, with prior approval of the department.	1[1]
b. Extension of final compliance date.	3
6. Changes in expiration date of permit to allow earlier permit termination, with prior approval of the department.	1[1]
7. Changes in ownership or operational control of a facility, provided the procedures of subsection 2 of section 33.1-24-06-11 are followed.	1[1]
8. Changes to remove permit conditions that are no longer applicable (for example, because the standards upon which they are based are no longer applicable to the facility).	1[1]
9. Changes to remove permit conditions applicable to a unit excluded under the provisions of section 33.1-24-02-04.	1[1]
10. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of section 33.1-24-02-04.	1[1]
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with department guidance or regulations.	1
b. To incorporate changes associated with F039 (multisource leachate) sampling or analysis methods.	1
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.	1[1]
d. Other changes.	
2. Changes to analytical quality assurance/control plan:	
a. To conform with department guidance or regulations.	1
b. Other changes.	2

Modifications	Class
3. Changes in procedures for maintaining the operating record.	1
4. Changes in frequency or content of inspection schedules.	2
5. Changes in the training plan:	
a. That affect the type or decrease the amount of training given to employees.	2
b. Other changes.	1
6. Contingency plan:	
a. Changes in emergency procedures (for example, spill or release response procedures).	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
c. Removal of equipment from emergency equipment list.	2
d. Changes in name, address, or telephone number of coordinators or other persons or agencies identified in the plan.	1
7. Construction quality assurance plan:	
a. Changes that the construction quality assurance officer certifies in the operating record will provide equivalent or better certainty that the unit components meet the design specifications.	1
b. Other changes.	2
Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.	
C. Ground Water Protection	
1. Changes to wells:	
a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted ground water monitoring system.	2
b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.	1
2. Changes in ground water sampling or analysis procedures or monitoring schedule, with prior approval of the department.	1[1]
3. Changes in statistical procedure for determining whether a statistically significant change in ground water quality between upgradient and downgradient wells has occurred, with prior approval of the department.	1[1]
4. Changes in point of compliance.	2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits):	
a. As specified in the ground water protection standard.	3
b. As specified in the detection monitoring program.	2
6. Changes to a detection monitoring program as required by subsection 8 of section 33.1-24-05-55, unless specified in this appendix.	2
7. Compliance monitoring program:	

Modifications	Class
a. Addition of compliance monitoring program as required by subdivision d of subsection 7 of section 33.1-24-05-55 and section 33.1-24-05-56.	3
b. Changes to a compliance monitoring program as required by subsection 10 of section 33.1-24-05-56, unless otherwise specified in this appendix.	2
8. Corrective action program:	
a. Addition of a corrective action program as required by subdivision b of subsection 8 of section 33.1-24-05-56 and section 33.1-24-05-57.	3
b. Changes to a corrective action program as required by subsection 8 of section 33.1-24-05-57, unless otherwise specified in this appendix.	2
D. Closure	
1. Changes to the closure plan:	
a. Changes in estimate of maximum extent of operations or maximum inventory of waste onsite at any time during the active life of the facility, with prior approval of the department.	1[1]
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the department.	1[1]
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the department.	1[1]
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the department.	1[1]
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.	2
2. Creation of a new landfill unit as part of closure.	3
3. Addition of the following new units to be used temporarily for closure activities:	
a. Surface impoundments.	3
b. Incinerators.	3
c. Waste piles that do not comply with subsection 3 of section 33.1-24-05-130.	3
d. Waste piles that comply with subsection 3 of section 33.1-24-05-130.	2
e. Tanks or containers (other than specified below).	2
f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the department.	1[1]
g. Staging piles.	2
E. Postclosure	
1. Changes in name, address, or telephone number of contact in postclosure plan.	1
2. Extension of postclosure care period.	2
3. Reduction in the postclosure care period.	3

Modifications	Class
4. Changes to the expected year of final closure, where other permit conditions are not changed.	1
5. Changes in postclosure plan necessitated by events occurring during the active life of the facility, including partial and final closure.	2
F. Containers	
1. Modification or addition of container units:	
a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	3
b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below.	2
c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" with prior approval of the department. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1[1]
2. a. Modification of a container unit without increasing the capacity of the unit.	2
b. Addition of a roof to a container unit without alteration of the containment system.	1
3. Storage of different wastes in containers, except as provided in F(4) below:	
a. That require additional or different management practices from those authorized in the permit.	3
b. That do not require additional or different management practices from those authorized in the permit.	2
Note: See subsection 7 of section 33.1-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.	
4. Storage or treatment of different wastes in containers:	
a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1[1]
b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1[1]
G. Tanks	

Modifications	Class
1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below.	3
b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below.	2
c. Addition of a new tank that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	2
d. After prior approval of the department, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.	1[1]
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003), with prior approval of the department. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1[1]
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.	2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/- 10% of the replaced tank provided:	1
a. The capacity difference is no more than 1,500 gallons;	
b. The facility's permitted tank capacity is not increased; and	
c. The replacement tank meets the same conditions in the permit.	
4. Modification of a tank management practice.	2
5. Management of different wastes in tanks:	
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below.	3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process than authorized in the permit, except as provided in G(5)(d).	2

Modifications	Class
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003). The modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1[1]
d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1
Note: See subsection 7 of section 33.1-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.	
H. Surface Impoundments	
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.	3
2. Replacement of a surface impoundment unit.	3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.	2
4. Modification of a surface impoundment management practice.	2
5. Treatment, storage, or disposal of different wastes in surface impoundments:	
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003), and provided that the unit meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33.1-24-05-254. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1
d. That are residues from wastewaster treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33.1-24-05-254, and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1

Modifications	Class
6. Modifications of unconstructed units to comply with subsection 3 of section 33.1-24-05-119, section 33.1-24-05-126, section 33.1-24-05-127, and subsection 4 of section 33.1-24-05-120.	1[1]
7. Changes in response action plan:	
a. Increase in action leakage rate.	3
b. Change in a specific response reducing its frequency or effectiveness.	3
c. Other changes.	2
Note: See subsection 7 of section 33.1-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.	
I. Enclosed Waste Piles. For all waste piles except those complying with subsection 3 of section 33.1-24-05-130, modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with subsection 3 of section 33.1-24-05-130.	
1. Modification or addition of waste pile units:	
a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.	2
2. Modification of waste pile unit without increasing the capacity of the unit.	2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.	1
4. Modification of a waste pile management practice.	2
5. Storage or treatment of different wastes in waste piles:	
a. That require additional or different management practices or different design of the unit.	3
b. That do not require additional or different management practices or different design of the unit.	2
6. Conversion of an enclosed waste pile to a containment building unit.	2
Note: See subsection 7 of section 33.1-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.	
J. Landfills and Unenclosed Waste Piles	
1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.	3
2. Replacement of a landfill.	3
3. Addition or modification of a liner, leachate collection system, leachate detection system, runoff control, or final cover system.	3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, runoff control, or final cover system.	2
5. Modification of a landfill management practice.	2
6. Landfill different wastes:	

Modifications	Class
a. That require additional or different management practices or different design of the liner, leachate collection system, or leachate detection system.	3
b. That do not require additional or different management practices or different design of the liner, leachate collection system, or leachate detection system.	2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii) as contained in the most recent revised edition (July 1, 2003), and provided that the landfill unit meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33.1-24-05-254. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in subdivision b of subsection 8 of section 33.1-24-05-254, and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).	1
7. Modifications of unconstructed units to comply with subsection 3 of section 33.1-24-05-131, section 33.1-24-05-137, section 33.1-24-05-138, subsection 3 of section 33.1-24-05-132, subsection 3 of section 33.1-24-05-177, section 33.1-24-05-187, subsection 3 of section 33.1-24-05-178, and section 33.1-24-05-188.	1[1]
8. Changes in response action plan:	
a. Increase in action leakage rate.	3
b. Change in a specific response reducing its frequency or effectiveness.	3
c. Other changes.	2
Note: See subsection 7 of section 33.1-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.	
K. Land Treatment	
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent.	3
2. Modification of run-on control system.	2
3. Modify runoff control system.	3
4. Other modifications of land treatment unit component specifications or standards required in permit.	2
5. Management of different wastes in land treatment units:	
a. That require a change in permit operating conditions or unit design specifications.	3
b. That do not require a change in permit operating conditions or unit design specifications.	2

Modifications	Class
Note: See subsection 7 of section 33.1-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.	
6. Modification of a land treatment unit management practice to:	
a. Increase rate or change method of waste application.	3
b. Decrease rate of waste application.	1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.	2
8. Modification of a land treatment unit management practice to grow food chain crops, to add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.	3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to subdivision b of subsection 7 of section 33.1-24-05-165.	3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or which replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements.	3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, number of sampling points, or which replace unsaturated zone monitoring devices or components of devices with devices or components having specifications different from permit requirements.	2
12. Changes in background values for hazardous constituents in soil and soil-pore liquid.	2
13. Changes in sampling, analysis, or statistical procedure.	2
14. Changes in land treatment demonstration program prior to or during the demonstration.	2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the department's prior approval has been received.	1[1]
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the department.	1[1]
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.	3
18. Changes in vegetative cover requirements for closure.	2
L. Incinerators, Boilers, and Industrial Furnaces:	

Modifications	Class
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove hydrogen chloride and chlorine metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The department may require a new trial burn to demonstrate compliance with the regulatory performance standards.	2
5. Operating requirements:	
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.	3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.	2
6. Burning different wastes:	

Modifications	Class
a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The department will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.	3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.	2
Note: See subsection 7 of section 33.1-24-06-14 for modification procedures to be used for the management of newly listed or identified wastes.	
7. Shakedown and trial burn:	
a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.	2
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the department.	1[1]
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the department.	1[1]
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the department.	1[1]
8. Substitution of an alternative type of nonhazardous waste fuel that is not specified in the permit.	1
9. Technology changes needed to meet standards under 40 CFR part 63 (subpart EEE - national emission standards for hazardous air pollutants from hazardous waste combustors), provide the procedures of subsection 10 of section 33.1-24-06-14 are followed.	1[1]
10. Changes to hazardous waste permit provisions needed to support transition to 40 CFR part 63 (subpart EEE - national emission standards for hazardous air pollutants from hazardous waste combustors), provided the procedures of subsection 11 of section 33.1-24-06-14 are followed.	1[1]
M. Containment Buildings	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.	2

Modifications	Class
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased.	1
b. The replacement containment building meets the same conditions in the permit.	1
4. Modification of a containment building management practice.	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices.	3
b. That do not require additional or different management practices.	2
N. Corrective Action	
1. Approval of a corrective action management unit pursuant to section 33.1-24-05-552.	3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to section 33.1-24-05-553.	2
3. Approval of a staging pile or staging pile operating term extension pursuant to section 33.1-24-05-554.	2
O. Burden Reduction	
1. Development of one contingency plan based on integrated contingency plan guidance pursuant to subsection 2 of section 33.1-24-05-27.	1
2. Changes to recordkeeping and reporting requirements pursuant to subsection 9 of section 33.1-24-05-31 and subsection 7 of section 33.1-24-05-57.	1
3. Changes to inspection frequency for tank systems pursuant to subsection 2 of section 33.1-24-05-108.	1
4. Changes to detection and compliance monitoring program pursuant to subsection 4 of section 33.1-24-05-55, subdivisions b and c of subsection 7 of section 33.1-24-05-55, and subsections 6 and 7 of section 33.1-24-05-56.	1

[1]Class 1 modifications requiring prior department approval.