CHAPTER 33.1-24-07
PERMITTING PROCEDURES

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33.1-24-07-01. Purpose and scope.

This chapter contains procedures for issuing, modifying, revoking and reissuing, or terminating all permits, other than "emergency permits" (see section 33.1-24-06-19) and "permits by rule" (see section 33.1-24-06-18). The latter kinds of permits are governed by chapter 33.1-24-06. Operating status prior to final administrative approval of the permit application is not a "permit" and is covered by specific provisions in chapter 33.1-24-06. The procedures of this chapter also apply to denial of a permit for the active life of a hazardous waste management facility or unit under subsection 2 of section 33.1-24-06-13.

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

33.1-24-07-02. Application for a permit.

1. General requirements.

   a. Any person who requires a hazardous waste permit shall complete, sign, and submit to the department an application in accordance with chapter 33.1-24-06.

   b. The department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. (See section 33.1-24-06-01.)

   c. Permit applications must comply with the signature and certification requirements of section 33.1-24-06-03.

2. The department shall review for completeness every application for a hazardous waste permit. Each application for a permit submitted by a new hazardous waste management facility should be reviewed for completeness by the department within thirty days of its receipt. Each application for a permit submitted by an existing hazardous waste management facility (both parts A and B of the application) should be reviewed for completeness within sixty days of receipt. Upon completing the review, the department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the department shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the department shall specify in the notice of deficiency a date for submitting the necessary information. The department shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the department may request additional information from an applicant, but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

3. If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions.

4. If the department decides that a site visit is necessary for any reason in conjunction with the processing of an application, the department shall notify the applicant and a date shall be scheduled.

5. The effective date of an application is the date on which the department notifies the applicant that the application is complete as provided in subsection 2.

6. For each application from a major new hazardous waste management facility, the department shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule must specify target dates by which the department intends to:

   a. Prepare a draft permit;

   b. Give public notice;

   c. Complete the public comment period, including any public hearings; and

   d. Issue a final 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

33.1-24-07-03. Modification, revocation and reissuance, or termination of permits.

1. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the department's initiative. However, permits may only be modified, revoked and reissued, or terminated by the department for the reasons specified in section 33.1-24-06-12 or 33.1-24-06-13. All requests shall be in writing and shall contain facts or reasons supporting the request.

2. If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comments, or hearings. Denials by the department may be informally appealed to the department by letter briefly setting forth the relevant facts. The department may then begin modification, revocation and reissuance, or termination proceedings under subsection 3. The appeal shall be considered denied if the department takes no action on the letter within sixty days after receiving it.

3. Requirements to modify or revoke.

   a. If the department tentatively decides to modify or revoke and reissue a permit under section 33.1-24-06-12 (other than subdivision c of subsection 2 of section 33.1-24-06-12) or subsection 3 of section 33.1-24-06-14, the department shall prepare a draft permit under section 33.1-24-07-04 incorporating the proposed changes. The department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, other than under subdivision c of subsection 2 of section 33.1-24-06-12, the department shall require the submission of a new application. In the case of revoked and reissued permits under subdivision c of subsection 2 of section 33.1-24-06-12, the department and the permittee shall comply with the appropriate requirements in sections 33.1-24-07-40 through 33.1-24-07-54 for hazardous waste standardized permits.

   b. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the

permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

c. "Class 1 and 2 modifications" as defined in section 33.1-24-06-14 are not subject to the requirements of this section.

4. If the department tentatively decides to terminate a permit under section 33.1-24-06-13, the department shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 33.1-24-07-04.

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

33.1-24-07-04. Draft permits.

1. Once an application is complete, the department shall tentatively decide whether to prepare a draft permit or to deny the application.

2. If the department tentatively decides to deny the permit application, the department shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. (See subsection 4.) If the department's final decision is that the tentative decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection 3.

3. If the department decides to prepare a draft permit, the department shall prepare a draft permit that contains the following information:

   a. All conditions under sections 33.1-24-06-04 and 33.1-24-06-05.

   b. All compliance schedules under section 33.1-24-06-07.

   c. All monitoring requirements under section 33.1-24-06-08.

   d. Standards for treatment, storage, and disposal and other permit conditions under section 33.1-24-06-04.

4. All draft permits prepared under this section shall be accompanied by a fact sheet (section 33.1-24-07-05), publicly noticed (section 33.1-24-07-06), and shall be made available for public comment (section 33.1-24-07-07). The department shall give notice of opportunity for a public hearing (section 33.1-24-07-08), issue a final decision (section 33.1-24-07-11) and respond to comments (section 33.1-24-07-13). An appeal may be taken under section 33.1-24-07-14.

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

33.1-24-07-05. Fact sheet.

1. A fact sheet must be prepared for every draft permit for a major hazardous waste management facility or activity, and for every draft permit which the department finds is the subject of widespread public interest or raises major issues. The fact sheet must briefly set forth the principle facts and the significant factual, legal, methodological, and policy questions

considered in preparing the draft permit. The department shall send this fact sheet to the applicant and, on request, to any other person.

2. The fact sheet must include, when applicable:

   a. A brief description of the type of facility or activity which is the subject of the draft permit;

   b. The type and quantity of wastes, fluids, or pollutants which are proposed to be, or are being treated, stored, disposed of, injected, emitted, or discharged;

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

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

   e. A description of the procedures for reaching a final decision on the draft permit, including:

      (1) The beginning and ending dates of the comment period under section 33.1-24-07-06 and the address where comments will be received;

      (2) Procedures for requesting a hearing and the nature of that hearing;

      (3) Any other procedures by which the public may participate in the final decision; and

   f. Name and telephone number of a person to contact for additional information.

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

33.1-24-07-06. Public notice of permit actions and public comment period.

1. **Scope.**

   a. The department shall give public notice that the following actions have occurred:

      (1) A permit application has been tentatively denied under subsection 2 of section 33.1-24-07-04.

      (2) A draft permit has been prepared under subsection 3 of section 33.1-24-07-04.

      (3) A hearing has been scheduled under section 33.1-24-07-08.

      (4) An appeal has been granted under subsection 3 of section 33.1-24-07-14.

   b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under subsection 2 of section 33.1-24-07-03. Written notice of that denial must be given to the requester and to the permittee.

   c. Public notices may describe more than one permit or permit action.

2. **Timing.**

   a. Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under subsection 1 must allow at least forty-five days for public comment.

b. Public notice of a public hearing must be given at least thirty days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

3. **Methods.** Public notice of activities described in subdivision a of subsection 1 must be given by the following methods:

   a. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subsection may waive that person's rights to receive notice for any classes and categories of permits):

      (1) The applicant.

      (2) Any other agency which the department knows has issued or is required to issue permits for the same facility or activity, including the environmental protection agency.

      (3) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the advisory council on historic preservation, state historic preservation officers, and other appropriate government authorities, including other affected states.

      (4) Persons on a mailing list developed by:

         (a) Including those who request in writing to be on the list;

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

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

      (5) To any unit of local government having jurisdiction over the area where the facility is proposed to be located.

      (6) To each state agency having any authority under state law with respect to construction or operation of such facility.

   b. This notice must comply with subsection 6 of North Dakota Century Code section 23.1-04-08 and must be in a manner constituting legal notice to the public under state law.

   c. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other form or medium to elicit public participation.

4. **Contents.**

   a. All public notices. All public notices issued under this chapter must contain the following minimum information:

      (1) Name and address of the office processing the permit action for which notice is being given.

(2) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

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

(4) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application.

(5) A brief description of the comment procedures required by sections 33.1-24-07-07 and 33.1-24-07-08 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(6) Any additional information considered necessary or proper.

b. Public notices for hearings. In addition to the general public notice described in subdivision a, the public notice of a hearing under section 33.1-24-07-08 must contain the following information:

(1) Reference to the date of previous public notices relating to the permit.

(2) Date, time, and place of the hearing.

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

5. **Distribution of copies.** In addition to the general public notice described in subdivision a of subsection 4, all persons identified in paragraphs 1, 2, and 3 of subdivision a of subsection 3 must be mailed a copy of the fact sheet, the permit application (if any), and the draft permit (if any).

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

33.1-24-07-07. Public comments and requests for public hearings.

During the public comment period provided under section 33.1-24-07-06, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled.

A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing. All comments must be considered in making the final decision and must be answered as provided in section 33.1-24-07-13.

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

33.1-24-07-08. Public hearings.

1. The department shall hold a public hearing:

a. Whenever the department finds, on the basis of requests, a significant degree of public interest in a draft permit;

b. At the department's discretion, whenever for instance, such a hearing might clarify one or more issues involved in the permit decision; or

c. Whenever the department receives written notice of opposition to a draft permit and a request for a hearing within forty-five days of public notice under subdivision a of subsection 2 of section 33.1-24-07-06.

2. Whenever possible, the department shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

3. Public notice of the hearing shall be given as specified in section 33.1-24-07-06.

4. Whenever a public hearing will be held, the department shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

5. Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required. The public comment period under section 33.1-24-07-06 must automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

6. A tape recording or written transcript of the hearing must be made available to the public.

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

33.1-24-07-09. Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the department's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period (including any public hearing) under section 33.1-24-07-06. All supporting materials must be included in full and may not be incorporated by reference, unless they consist of state or federal statutes or regulations, or other generally available reference materials. Commenters shall make supporting material available to the department. (A comment period longer than thirty days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they should be freely established under section 33.1-24-07-06 to the extent that they appear 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; S.L. 2017, ch. 199, § 19

33.1-24-07-10. Reopening of the public comment period.

1. If any data, information, or arguments submitted during the public comment period, including information or arguments required under section 33.1-24-07-09, appear to raise substantial new questions concerning a permit, the department may take one or more of the following actions:

a. Prepare a new draft permit, appropriately modified, under section 33.1-24-07-04.

b. Prepare a revised fact sheet under section 33.1-24-07-05 and reopen the comment period under section 33.1-24-07-10.

c. Reopen or extend the comment period under section 33.1-24-07-06 to give interested persons an opportunity to comment on the information or arguments submitted.

2. Comments filed during the reopened comment period must be limited to the substantial new questions that caused its reopening. The public notice under section 33.1-24-07-06 defines the scope of the reopening.

3. Public notice of any of the above actions must be issued under section 33.1-24-07-06.

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

33.1-24-07-11. Issuance and effective date of permit.

1. After the close of the public comment period under section 33.1-24-07-06 on a draft permit, the department shall issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under subsection 2 of section 33.1-24-06-13). The department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice must include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

2. A final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under subsection 2 of section 33.1-24-06-13) shall become effective thirty days after the service of notice of the decision under subsection 1, unless:

   a. A later effective date is specified in the decision;

   b. Review is requested under section 33.1-24-07-14; or

   c. No comments required a change in the draft permit, in which case the permit shall become effective immediately upon 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

33.1-24-07-12. Stays of contested permit conditions.

1. Stays.

   a. If a request for review of a permit under section 33.1-24-07-14 is granted, the effect of the contested permit conditions is stayed and is not subject to judicial review pending final department action. If the permit involves a new facility, the applicant is without a permit for the proposed new facility pending final agency action.

   b. Uncontested conditions which are not severable from those contested must be stayed together with the contested conditions. Stayed provisions of permits for existing facilities must be identified by the department. All other provisions of the permit for the existing facility remain fully effective and enforceable.

2. Stays based on cross effects. A stay may be granted based on the grounds that an appeal to the department under section 33.1-24-07-14 of one permit may result in changes to another

permit only when each of the permits involved has been appealed to the department and the department has accepted each appeal.

3. Any facility or activity holding an existing permit shall:

   a. Comply with the conditions of that permit during any modification or revocation and reissuance proceedings under section 33.1-24-07-03; and

   b. To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which corresponds to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

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

33.1-24-07-13. Response to comments.

1. At the time that a final permit is issued under section 33.1-24-07-11, the department shall issue a response to comments. This response must:

   a. Specify which provisions, if any, of the draft permits have been changed in the final permit decision, and the reasons for the change; and

   b. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing.

2. The response to comments must be available to the public.

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

33.1-24-07-14. Appeal of permit.

1. Within thirty days after a final permit decision (or a decision under subsection 2 of section 33.1-24-06-13 to deny a permit for the active life of a hazardous waste management facility or unit) has been issued under section 33.1-24-07-11, any person who filed comments on that draft permit or participated in the public hearing may petition the department to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The thirty-day period within which a person may request review under this section begins with the service of notice of the department's action unless a later date is specified in that notice. The petition must include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these rules and, when appropriate, a showing that the condition in question is based on.

   a. A finding of fact or conclusion of law which is clearly erroneous; or

   b. An exercise of discretion or an important policy consideration which the department should, in the department's discretion, review.

2. The department may also decide on the department's initiative to review any condition of any permit issued under this article. The department must act under this section within thirty days of the service date of notice of the department's action.

3. Within a reasonable time following the filing of the petition for review, the department shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final department action. Public notice of any grant of review by the department under subsection 1 or 2 must be given as provided in section 33.1-24-07-06. Public notice must set forth a briefing schedule for the appeal and must state that any interested person may file an amicus brief. A notice of denial of review may be sent only to the person requesting review.

4. Final department action occurs when a final permit is issued or denied by the department and the department review procedures are exhausted. A final permit decision must be issued by the department:

   a. When the department issues notice to the parties that review has been denied.

   b. When the department issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or upon the completion of remand proceedings if the proceedings are remanded, unless the department remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

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

33.1-24-07-15. [Reserved].

33.1-24-07-16. [Reserved].

33.1-24-07-17. [Reserved].

33.1-24-07-18. [Reserved].

33.1-24-07-19. [Reserved].

33.1-24-07-20. [Reserved].

33.1-24-07-21. [Reserved].

33.1-24-07-22. [Reserved].

33.1-24-07-23. [Reserved].

33.1-24-07-24. [Reserved].

33.1-24-07-25. Preapplication public meeting and notice.

1. Applicability. The requirements of this section apply to all hazardous waste part B applications seeking initial permits for hazardous waste management units. The requirements of this section also apply to hazardous waste part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under section 33.1-24-06-14. The requirements of this section also apply to hazardous waste management facilities for which facility owners or operators are seeking coverage under a hazardous waste standardized permit (see sections 33.1-24-06-45 through 33.1-24-06-85), including renewal of a standardized permit for such units, where the renewal is proposing a significant change in facility operations, as defined at subsection 3 of section 33.1-24-07-51. The requirements of this section do not apply to permit modifications under section 33.1-24-06-14 or to applications that are submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.

2. Prior to the submission of a part B hazardous waste permit application for a facility, or to the submission of a written notice of intent to be covered by a hazardous waste standardized permit (see sections 33.1-24-06-45 through 33.1-24-06-85), the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

3. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 2, and copies of any written comments or materials submitted at the meeting, to the department as a part of the part B application, in accordance with subsection 2 of section 33.1-24-06-17, or with the written notice of intent to be covered by a hazardous waste standardized permit (see sections 33.1-24-06-45 through 33.1-24-06-85).

4. The applicant shall provide public notice of the preapplication meeting at least thirty days prior to the meeting. The applicant shall maintain, and provide to the department upon request, documentation of the notice.

    a. The applicant shall provide public notice in all of the following forms:

        (1) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subdivision b, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the department shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the department determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

        (2) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subdivision b. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

        (3) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subdivision b, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the department.

(4) A notice to the department. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of state and local government, in accordance with subdivision b of subsection 3 of section 33.1-24-07-06.

b. The notices required under subdivision a must include:

(1) The date, time, and location of the meeting;

(2) A brief description of the purpose of the meeting;

(3) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location;

(4) A statement encouraging people to contact the facility at least seventy-two hours before the meeting if they need special access to participate in the meeting; and

(5) The name, address, and telephone number of a contact person for the applicant.

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

33.1-24-07-26. Public notice requirements at the application stage.

1. Applicability. The requirements of this section apply to all hazardous waste part B applications seeking initial permits for hazardous waste management units. The requirements of this section also apply to hazardous waste part B applications seeking renewal of permits for such units under section 33.1-24-06-02. The requirements of this section do not apply to hazardous waste units for which facility owners or operators are seeking coverage under a hazardous waste standardized permit (see sections 33.1-24-06-45 through 33.1-24-06-85). The requirements of this section also do not apply to permit modifications under section 33.1-24-06-14 or permit applications submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.

2. Notification at application submittal.

a. The department shall provide public notice as set forth in paragraph 4 of subdivision a of subsection 3 of section 33.1-24-07-06, and notice to appropriate units of state and local government as set forth in subdivision b of subsection 3 of section 33.1-24-07-06, that a part B permit application has been submitted to the department and is available for review.

b. The notice must be published within a reasonable period of time after the application is received by the department. The notice must include:

(1) The name and telephone number of the applicant's contact person;

(2) The name and telephone number of the department's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(3) An address to which people can write in order to be put on the facility mailing list;

(4) The location where copies of the permit application and any supporting documents can be viewed and copied;

(5) A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice; and

(6) The date that the application was submitted.

3. Concurrent with the notice required under subsection 2, the department must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office.

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

33.1-24-07-27. Information repository.

1. Applicability. The requirements of this section apply to all applications seeking hazardous waste permits for hazardous waste management units.

2. The department may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the department shall consider a variety of factors, including the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the department determines, at any time after submittal of a permit application, that there is a need for a repository, then the department shall notify the facility that it must establish and maintain an information repository. (See subsection 13 of section 33.1-24-06-04 for similar provisions relating to the information repository during the life of a permit.)

3. The information repository shall contain all documents, reports, data, and information deemed necessary by the department to fulfill the purposes for which the repository is established. The department may limit the contents of the repository.

4. The information repository must be located and maintained at a site chosen by the facility. If the department finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the department shall specify a more appropriate site.

5. The department shall specify requirements for informing the public about the information repository. At a minimum, the department shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

6. The facility owner or operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the department. The department may close the repository at its discretion, based on the factors in subsection 2.

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

33.1-24-07-28. [Reserved].

33.1-24-07-29. [Reserved].

33.1-24-07-30. [Reserved].

33.1-24-07-31. [Reserved].

33.1-24-07-32. [Reserved].

33.1-24-07-33. [Reserved].

33.1-24-07-34. [Reserved].

33.1-24-07-35. [Reserved].

33.1-24-07-36. [Reserved].

33.1-24-07-37. [Reserved].

33.1-24-07-38. [Reserved].

33.1-24-07-39. [Reserved].

33.1-24-07-40. Standardized permit.

The standardized permit is a special form of hazardous waste permit which may consist of two parts: A uniform portion that the department issues in all cases, and a supplemental portion that the department issues at the department's discretion. Standardized permit is defined in section 33.1-24-01-04.

1. The uniform portion of a standardized permit consists of terms and conditions, relevant to the unit or units operating at the facility, contained in sections 33.1-24-05-950 through 33.1-24-05-1149. If the owner or operator intends to operate under the standardized permit, the owner or operator shall comply with these applicable terms and conditions.

2. The supplemental portion of a standardized permit consists of site specific terms and conditions, beyond those of the uniform portion, which the department may impose on the facility, as necessary to protect human health and the environment. If the department issues a supplemental portion, the owner or operator shall comply with the site specific terms and conditions the department imposes.

    a. When required under section 33.1-24-05-1031, provisions to implement corrective action will be included in the supplemental portion.

    b. Unless otherwise specified, these supplemental permit terms and conditions apply to the facility in addition to the terms and conditions of the uniform portion of the standardized permit and not in place of any of those terms and conditions.

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

33.1-24-07-41. 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 facility permit.

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

33.1-24-07-42. Applying for a standardized permit.

1. The owner or operator shall follow the requirements in sections 33.1-24-07-40 through 33.1-24-07-54, section 33.1-24-07-25, section 33.1-24-06-01, and sections 33.1-24-06-45 through 33.1-24-06-85.

2. The owner or operator shall submit to the department a written notice of intent to operate under the standardized permit and shall include the information and certifications required under 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

33.1-24-07-43. Switching from a hazardous waste permit to a standardized permit.

If all units in the hazardous waste permit are eligible for the standardized permit, the permittee may request the individual permit be revoked and reissued as a standardized permit, in accordance with section 33.1-24-07-03. If only some of the units in the hazardous waste permit are eligible for the standardized permit, the permittee may request the individual permit be modified to no longer include those units and issue a standardized permit for those units in accordance with section 33.1-24-07-44.

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

33.1-24-07-44. Draft standardized permit.

1. The department shall:

a. Review the notice of intent and supporting information submitted by the facility owner or operator.

b. Determine whether the facility is or is not eligible to operate under the standardized permit.

(1) If the facility is eligible for the standardized permit, the department shall propose terms and conditions, if any, to include in a supplemental portion. If the department determines these terms and conditions are necessary to protect human health and the environment and cannot be imposed, the department tentatively shall deny coverage under the standardized permit.

(2) If the facility is not eligible for the standardized permit, the department tentatively shall deny coverage under the standardized permit. Cause for ineligibility may include the following:

(a) Failure of the facility owner or operator to submit all the information required under section 33.1-24-06-57.

(b) Information submitted that is required under section 33.1-24-06-57 is determined to be inadequate.

(c) Facility does not meet the eligibility requirements (activities are outside the scope of the standardized permit).

(d) Demonstrated history of significant noncompliance with applicable requirements.

(e) Permit conditions cannot ensure protection of human health and the environment.

c. Prepare a draft permit decision within one hundred twenty days after receiving the notice of intent and supporting documents from a facility owner or operator. A tentative determination under this section to deny or grant coverage under the standardized permit, including any proposed site specific conditions in a supplemental portion, constitutes a draft permit decision. A one-time extension of thirty-days to prepare the draft permit decision is allowed. When the use of the thirty-day extension is anticipated, the department should inform the permit applicant during the initial one-hundred-twenty-day review period. Reasons for an extension may include needing to complete review of submissions with the notice of intent (for example, closure plans, waste analysis plans, for facilities seeking to manage hazardous waste generated offsite).

2. The draft permit decision must be accompanied by a fact sheet. In preparing the draft permit decision, the following provisions apply:

a. Section 33.1-24-07-01.

b. Subsections 1 and 4 of section 33.1-24-07-02.

c. Section 33.1-24-07-05; however, in the context of the standardized permit, the reference to the public comment period is section 33.1-24-07-48 instead of section 33.1-24-07-06.

d. Paragraphs 4 and 5 of subdivision a of subsection 3 of section 33.1-24-07-06, and sections 33.1-24-07-47 through 33.1-24-07-49.

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

33.1-24-07-45. Final standardized permit.

The department shall consider all comments received during the public comment period in making a final permit decision. In preparing a final permit decision, the following provisions apply:

1. Section 33.1-24-07-01.

2. Section 33.1-24-07-48.

3. Subsections 4, 5, and 6 of section 33.1-24-07-08.

4. Section 33.1-24-07-09; however, in the context of the standardized permit, the reference to the public comment period is section 33.1-24-07-48 instead of section 33.1-24-07-06.

5. Section 33.1-24-07-10; however, in the context of the standardized permit, use the following reference: in subdivision a of subsection 1 of section 33.1-24-07-10 use reference to section 33.1-24-07-44 instead of section 33.1-24-07-04; in subdivision c of subsection 1 of section 33.1-24-07-10 use reference to section 33.1-24-07-48 instead of section 33.1-24-07-06; in subsection 2 of section 33.1-24-07-10 use reference to section 33.1-24-07-47 instead of section 33.1-24-07-06.

6. Section 33.1-24-07-11; however, in the context of the standardized permit, the reference to the public comment period is section 33.1-24-07-48 instead of section 33.1-24-07-06.

7. Section 33.1-24-07-12.

8. Section 33.1-24-07-49.

9. Section 33.1-24-07-14.

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

33.1-24-07-46. Situations requiring an application for an individual permit.

1. Cases where the department may determine a facility is not eligible for the standardized permit include the following:

   a. The facility does not meet the criteria in section 33.1-24-07-41.

   b. The facility has a demonstrated history of significant noncompliance with rules, regulations or permit conditions.

   c. The facility has a demonstrated history of submitting incomplete or deficient permit application information.

   d. The facility has submitted incomplete or inadequate materials with the notice of intent.

2. If the department determines a facility is not eligible for the standardized permit, the department shall inform the facility owner or operator that the facility owner or operator must apply for an individual hazardous waste permit.

3. The department may require any facility that has a standardized permit to apply for and obtain an individual hazardous waste permit. Any interested person may petition the department to take action under this subsection. Cases where the department may require an individual hazardous waste permit include the following:

   a. The facility is not in compliance with the terms and conditions of the standardized permit.

   b. Circumstances have changed since the time the facility owner or operator applied for the standardized permit, so that the facility's hazardous waste management practices are no longer appropriately controlled under the standardized permit.

4. The department may require any facility authorized by a standardized permit to apply for an individual hazardous waste permit only if the department has notified the facility owner or operator in writing that an individual permit application is required. The notice must include a brief statement of the reasons for the department's decision, a statement setting a deadline for the owner or operator to file the application, and a statement that, on the effective date of the

individual hazardous waste permit, the facility's standardized permit automatically terminates. Additional time may be granted upon request from the facility owner or operator.

5. Issuance of an individual hazardous waste permit to an owner or operator otherwise subject to a standardized permit, the standardized permit for the facility will automatically cease to apply on the effective date of the individual 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

33.1-24-07-47. Public notice of permit actions and public involvement.

1. The department shall provide public notice of the department's draft permit decision and shall provide an opportunity for the public to submit comments and request a hearing on that decision. The public notice must be provided to:

   a. The applicant;

   b. Any other agency that the department knows has issued or is required to issue a hazardous waste permit for the same facility or activity, including the environmental protection agency;

   c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the advisory council on historic preservation, state historic preservation officers, including any affected states;

   d. To everyone on the facility mailing list developed according to the requirements in paragraph 4 of subdivision a of subsection 3 of section 33.1-24-07-06; and

   e. To any units of local government having jurisdiction over the area where the facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of the facility.

2. The public notice must be issued according to the following methods:

   a. Publication in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

   b. In a manner constituting legal notice to the public under state law and must comply with subsection 6 of North Dakota Century Code section 23.1-04-08; and

   c. Any other method reasonably calculated to give actual notice of the draft permit decision to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

3. The following information must be included in the public notice:

   a. The name and telephone number of the contact person at the facility.

   b. The name and telephone number of the office processing the permit action, and a mailing address to which people may direct comments, information, opinions, or inquiries.

   c. An address to which people may write to be put on the facility mailing list.

   d. The location where people may view and make copies of the draft standardized permit and the notice of intent and supporting documents.

e. A brief description of the facility and proposed operations, including the address or a map (for example, a sketched or copied street map) of the facility location on the front page of the notice.

f. The date that the facility owner or operator submitted the notice of intent and supporting documents.

4. At the same time that the public notice is issued under this section, the draft standardized permit (including both the uniform portion and the supplemental portion, if any), the notice of intent and supporting documents, and the fact sheet must be placed in a location accessible to the public in the vicinity of the facility or at the department's office.

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

33.1-24-07-48. Public comment and request for public hearings.

1. The public notice issued under section 33.1-24-07-47 must allow at least a forty-five day public comment period for people to submit written comments on the draft permit decision. The public comment period is automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

2. During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing.

3. The department shall hold a public hearing whenever it receives a written notice of opposition to a standardized permit and a request for a hearing within the public comment period under subsection 1. The department also may hold a public hearing at the department's discretion whenever such a hearing might clarify one or more issues involved in the permit decision.

4. Whenever possible, the department shall schedule a hearing under this section at a location convenient to the nearest population center to the facility. The department shall give public notice of the hearing at least thirty days before the date set for the hearing.

5. The department shall give public notice of the hearing according to the methods in subsections 1 and 2 of section 33.1-24-07-47. The hearing must be conducted according to the procedures in subsections 4, 5, and 6 of section 33.1-24-07-08.

6. In their written comments and during the public hearing, if held, interested parties may provide comments on the draft permit decision. These comments may include the facility's eligibility for the standardized permit, the tentative supplemental conditions proposed, and the need for additional supplemental conditions.

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

33.1-24-07-49. Response to comments.

1. At the time a final standardized permit is issued, the department shall respond to comments received during the public comment period on the draft permit. This response must:

a. Specify which additional conditions (for example, those in the supplemental portion), if any, have been changed in the final permit, and the reasons for the change.

b. Briefly describe and respond to all significant comments on the facility's ability to meet the general requirements (for example, those terms and conditions in the uniform portion) and on any additional conditions necessary to protect human health and the environment raised during the public comment period or during the hearing.

c. Make the comments and responses accessible to the public.

2. The department may request additional information from the facility owner or operator or inspect the facility if additional information is needed to adequately respond to significant comments or to make decisions about conditions that may need to be added to the supplemental portion of the 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

33.1-24-07-50. Appeal of permit.

Any person may petition for administrative review of the department's final permit decision, including the decision that the facility is eligible for the standardized permit, according to the procedures of section 33.1-24-07-14. However, the terms and conditions of the uniform portion of the standardized permit are not subject to administrative review under this provision.

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

33.1-24-07-51. Permit changes at the request of the permittee.

The permittee may make both routine changes, routine changes with prior department approval, and significant changes. For the purposes of this section:

1. "Routine changes" are any changes to the standardized permit that qualify as a class 1 permit modification (without prior department approval) under section 33.1-24-06-14, appendix I;

2. "Routine changes with prior department approval" are for those changes to the standardized permit that would qualify as a class 1 modification with prior department approval, or a class 2 permit modification under section 33.1-24-06-14, appendix I; and

3. "Significant changes" are any changes to the standardized permit which:

   a. Qualify as a class 3 permit modification under section 33.1-24-06-14, appendix I;

   b. Are not explicitly identified in section 33.1-24-06-14, appendix I; or

   c. Amend any terms or conditions in the supplemental portion of the 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

33.1-24-07-52. Routine changes.

1. The permittee may make routine changes to the standardized permit without obtaining approval from the department. However, the permittee first must determine whether the routine change will amend the information submitted under section 33.1-24-06-57 with the notice of intent to operate under the standardized permit.

2. If the routine changes will amend the information submitted under section 33.1-24-06-57 with the notice of intent to operate under the standardized permit, then before making the routine changes the permittee must:

   a. Submit to the department the revised information pursuant to subdivision a of subsection 1 of section 33.1-24-06-57; and

   b. Provide notice of the changes to the facility mailing list and to state and local governments in accordance with the procedures in paragraphs 4 through 6 of subdivision a of subsection 3 of section 33.1-24-07-06.

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

33.1-24-07-53. Routine changes with prior approval.

1. Routine changes to the standardized permit with prior department approval may only be made with the prior written approval of the department.

2. The permittee also must follow the procedures in subdivisions a and b of subsection 2 of section 33.1-24-07-52.

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

33.1-24-07-54. Significant changes.

1. The permittee shall first provide notice of and conduct a public meeting.

   a. Public meeting. The permittee shall hold a meeting with the public to solicit questions from the community and inform the community of the permittee's proposed modifications to the permittee's hazardous waste management activities. The permittee must post a sign-in sheet or otherwise provide a voluntary opportunity for people attending the meeting to provide their names and addresses.

   b. Public notice. At least thirty days before planning to hold the meeting, the permittee shall issue a public notice in accordance with the requirements of subsection 4 of section 33.1-24-07-25.

2. After holding the public meeting, the permittee shall submit a modification request to the department that:

   a. Describes the exact change or changes and whether they are changes to information provided under section 33.1-24-06-57 or to terms and conditions in the supplemental portion of the standardized permit;

   b. Explain why the modification is needed; and

   c. Includes a summary of the public meeting under subsection 1, along with the list of attendees and their addresses and copies of any written comments or materials they submitted at the meeting.

3. Once the department receives the modification request, the department shall make a tentative determination within one hundred twenty days to approve or disapprove the request. The department is allowed a one-time extension of thirty days to prepare the draft permit decision.

When the use of the thirty-day extension is anticipated, the department should inform the permittee during the initial one hundred twenty-day review period.

4. After the department makes this tentative determination, the procedures in section 33.1-24-07-45 and sections 33.1-24-07-47 through 33.1-24-07-50 for processing an initial request for coverage under the standardized permit apply to making the final determination on the modification request.

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