

ARTICLE 33-15
AIR POLLUTION CONTROL

Chapter	
33-15-01	General Provisions
33-15-02	Ambient Air Quality Standards
33-15-03	Restriction of Emission of Visible Air Contaminants
33-15-04	Open Burning Restrictions
33-15-05	Emissions of Particulate Matter Restricted
33-15-06	Emissions of Sulfur Compounds Restricted
33-15-07	Control of Organic Compounds Emissions
33-15-08	Control of Air Pollution From Vehicles and Other Internal Combustion Engines
33-15-09	Emission of Certain Settleable Acids and Alkaline Substances Restricted [Repealed]
33-15-10	Control of Pesticides
33-15-11	Prevention of Air Pollution Emergency Episodes
33-15-12	Standards of Performance for New Stationary Sources
33-15-13	Emission Standards for Hazardous Air Pollutants
33-15-14	Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate
33-15-15	Prevention of Significant Deterioration of Air Quality
33-15-16	Restriction of Odorous Air Contaminants
33-15-17	Restriction of Fugitive Emissions
33-15-18	Stack Heights
33-15-19	Visibility Protection
33-15-20	Control of Emissions from Oil and Gas Well Production Facilities
33-15-21	Acid Rain Program
33-15-22	Emissions Standards for Hazardous Air Pollutants for Source Categories
33-15-23	Fees
33-15-24	Standards for Lead-Based Paint Activities
33-15-25	Regional Haze Requirements

CHAPTER 33-15-01
GENERAL PROVISIONS

Section	
33-15-01-01	Purpose
33-15-01-02	Scope
33-15-01-03	Authority
33-15-01-04	Definitions

33-15-01-05	Abbreviations
33-15-01-06	Entry onto Premises - Authority
33-15-01-07	Variations
33-15-01-08	Circumvention
33-15-01-09	Severability
33-15-01-10	Land Use Plans and Zoning Regulations
33-15-01-11	(Reserved)
33-15-01-12	Measurement of Emissions of Air Contaminants
33-15-01-13	Shutdown and Malfunction of an Installation - Requirement for Notification
33-15-01-14	Time Schedule for Compliance
33-15-01-15	Prohibition of Air Pollution
33-15-01-16	Confidentiality of Records
33-15-01-17	Enforcement
33-15-01-18	Compliance Certifications

33-15-01-01. Purpose. It is the purpose of these air quality standards and emission regulations to state such requirements as shall be required to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience for the people, and to facilitate the enjoyment of the natural attractions of this state.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-01.1

33-15-01-02. Scope. These air quality standards and emission regulations apply to any source or emission existing partially or wholly within North Dakota.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-03. Authority. The North Dakota state department of health has been authorized to provide and administer this article under the provisions of North Dakota Century Code chapter 23-25.

History: Amended effective September 1, 1997.

General Authority: NDCC 23-25-02

Law Implemented: NDCC 23-25-02

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or when the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23-25.
2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. "Ambient air" means the surrounding outside air.
5. "ASME" means the American society of mechanical engineers.
6. "Coal conversion facility" means any of the following:
 - a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.
 - b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.
 - c. A coal beneficiation plant, and all additions thereto, which improves the physical, environmental, or combustion qualities of coal and

are built in conjunction with a facility defined in subdivision a or b.

7. "Control equipment" means any device or contrivance which prevents or reduces emissions.
8. "Department" means the North Dakota state department of health.
9. "Emission" means a release of air contaminants into the ambient air.
10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable requirement specified in this article or a permit issued pursuant to this article.
- ~~11~~11. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.
- ~~12~~12. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to 40, Code of Federal Regulations, parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40, Code of Federal Regulations, 52.21 or under regulations approved pursuant to 40, Code of Federal Regulations, part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.
- ~~13~~13. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible

material for the primary purpose of producing heat or power by indirect heat transfer.

1314. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.
1415. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.
1516. "Hazardous waste" has the same meaning as given by chapter 33-24-02.
1617. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.
1718. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.
1819. "Industrial waste" means solid waste which is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
1920. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
2021. "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or

construction, capable of creating or causing emissions.

2122. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.
2223. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.
2324. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.
2425. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
2526. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.
2627. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.
2728. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.

~~28~~29. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.

2930. "Pesticide" includes:

- a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;
- b. any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
- c. any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscicides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.

~~30~~31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.

32. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five tenths micrometers.

~~31~~33. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

3234. "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.
3335. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].
3436. "Premises" means any property, piece of land or real estate, or building.
3537. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.
3638. "Process weight rate" means the rate established as follows:
- a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
 - b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.
3739. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
3840. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste and infectious waste.

3941. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1144 degrees Kelvin to 1255 degrees Kelvin]).
4042. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.
4143. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.
4244. "Source" means any property, real or personal, or person contributing to air pollution.
4345. "Source operation" means the last operation preceding emission which operation:
- a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and
 - b. Is not an air pollution abatement operation.
4446. "Special waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
4547. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.

4648. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].
4749. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.
4850. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including, but not limited to, wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.
4951. "Trash" means refuse commonly generated by food warehouses, wholesalers and retailers which is comprised only of non-recyclable paper, paper products, cartons, cardboard, wood, wood scraps and floor sweepings and other similar materials. Trash shall not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash shall be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste and similar substances.
5052. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on ~~January 1, 2006~~ March 1, 2008 which is incorporated by reference.
5153. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; December 1, 1994; January 1, 1996;

September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-05. Abbreviations. The abbreviations used in this article have the following meanings:

A	-	ampere
A.S.T.M.	-	American Society for Testing and Materials
Btu	-	British thermal unit
°C	-	degree Celsius (centigrade)
cal	-	calorie
CdS	-	cadmium sulfide
cfm	-	cubic feet per minute
CFR	-	Code of federal regulations
cu ft	-	cubic feet
CO	-	carbon monoxide
CO ₂	-	carbon dioxide
dcf	-	dry cubic feet
dcm	-	dry cubic meter
dscf	-	dry cubic feet at standard conditions
dscm	-	dry cubic meter at standard conditions
eq	-	equivalents
°F	-	degree Fahrenheit
ft	-	feet
g	-	gram
gal	-	gallon
g eq	-	gram equivalents
gr	-	grain
hr	-	hour
HCl	-	hydrochloric acid
Hg	-	mercury
H ₂ O	-	water
H ₂ S	-	hydrogen sulfide
H ₂ SO ₄	-	sulfuric acid
Hz	-	hertz
in.	-	inch
j	-	joule
°K	-	degree Kelvin
k	-	1,000
kg	-	kilogram
l	-	liter
lpm	-	liter per minute
lb	-	pound

m	-	meter
m ³	-	cubic meter
meq	-	milliequivalent
min	-	minute
mg	-	milligram - 10 ⁻³ gram
Mg	-	megagram - 10 ⁶ gram
ml	-	milliliter - 10 ⁻³ liter
mm	-	millimeter - 10 ⁻³ meter
mol	-	mole
mol.wt.	-	molecular weight
mV	-	millivolt
N ₂	-	nitrogen
N	-	newton
ng	-	nanogram - 10 ⁻⁹ gram
nm	-	nanometer - 10 ⁻⁹ meter
NO	-	nitric oxide
NO ₂	-	nitrogen dioxide
NO _x	-	nitrogen oxides
O ₂	-	oxygen
Pa	-	pascal
<u>PM</u>	<u>-</u>	<u>particulate matter</u>
<u>PM_{2.5}</u>	<u>-</u>	<u>particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers</u>
PM ₁₀	-	particulate matter with an aerodynamic diameter ≤ 10 micrometers
ppb	-	parts per billion
ppm	-	parts per million
psia	-	pounds per square inch absolute
psig	-	pounds per square inch gauge
°R	-	degree Rankine
s-sec	-	second
scf	-	cubic feet at standard conditions
scfh	-	cubic feet per hour at standard conditions
scm	-	cubic meters at standard conditions
scmh	-	cubic meters per hour at standard conditions
SO ₂	-	sulfur dioxide
SO ₃	-	sulfur trioxide
SO _x	-	sulfur oxides
sq ft	-	square feet
std	-	at standard conditions
TSP	-	total suspended particulate
µg	-	microgram - 10 ⁻⁶ gram
V	-	volt
W	-	watt
Ω	-	ohm

History: Amended effective January 1, 1989; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-06. Entry onto premises - authority. Entry onto premises and onsite inspection shall be made pursuant to North Dakota Century Code section 23-25-05.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-05

33-15-01-07. Variances.

1. Where upon written application of the responsible person or persons the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship, would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe for prevention, control, or abatement of air pollution in harmony with the intent of the state and any applicable federal laws.
2. No variance may permit or authorize the creation or continuation of a public nuisance, or a danger to public health or safety.

History: Amended effective June 1, 1990.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-08. Circumvention. No person shall cause or permit the installation or use of any device or any means which conceals or dilutes an emission of air contaminant which would otherwise violate this article.

History: Amended effective June 1, 1990.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-09. Severability. If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article and the various applications thereof are declared to be severable.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-10. Land use plans and zoning regulations.

1. Planning agency land use plans.

a. The department will provide to planning agencies, for use in preparing land use plans, information concerning:

- (1) Air quality.
- (2) Air pollutant emissions.
- (3) Air pollutant meteorology.
- (4) Air quality goals.
- (5) Air pollution effects.

b. The department will review all land use plans and prepare recommendations for consideration in the plan adoption process.

2. Zoning agency regulations.

a. The department will provide to zoning control agencies, for use in preparing regulations, information concerning:

- (1) Air quality.
- (2) Air pollutant emissions.
- (3) Air pollution meteorology.
- (4) Air quality goals.

(5) Air pollution effects.

- b. The department will review all zoning regulations and prepare recommendations for consideration in the regulation adoption process.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-11. (RESERVED)

33-15-01-12. Measurement of emissions of air contaminants.

1. **Sampling and testing.** The department may reasonably require any person responsible for emission of air contaminants to make or have made tests, at a reasonable time or interval, to determine the emission of air contaminants from any source, for the purpose of determining whether the person is in violation of any standard under this article or to satisfy other requirements under the North Dakota Century Code chapter 23-25. All tests shall be made and the results calculated in accordance with test procedures approved or specified by the department. All tests shall be conducted by reputable, qualified personnel. The department shall be given a copy of the test results in writing and signed by the person responsible for the tests.

The owner or operator of a source shall notify the department using forms supplied by the department, or its equivalent, at least thirty calendar days in advance of any tests of emissions of air contaminants required by the department. Advanced notification for all other testing will be consistent with the requirements of the appropriate regulations but in no case will be less than thirty days. If the owner or operator of a source is unable to conduct the performance test on the scheduled date, the owner or operator of a source shall notify the department as soon as practicable when conditions warrant, and shall coordinate a new test date with the department.

Failure to give the proper notification may prevent the department from observing the test. If the Department is unable to observe the test because of improper notification, the test results may be rejected.

2. **The department may make tests.** The department may conduct tests of emissions of air contaminants from any source. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices as may be necessary for proper determination of the emission of air contaminants.

History: Amended effective June 1, 2001.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-01-13. Shutdown and malfunction of an installation - Requirement for notification.

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the department at least twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:
 - a. Identification of the specific facility to be taken out of service as well as its location and permit number.
 - b. The expected length of time that the air pollution control equipment will be out of service.
 - c. The nature and estimated quantity of emissions of air pollutants likely to be emitted during the shutdown period.
 - d. Measures, such as the use of off-shift labor and equipment, that will be taken to minimize the length of the shutdown period and emissions during the shutdown.
 - e. The reasons that it would be impossible or impractical to shutdown the source operation during the maintenance period.

f. Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article.

2. **Malfunctions.**

- a. When a malfunction in any installation occurs that can be expected to last longer than twenty-four hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations, the person responsible for such installation shall notify the department of such malfunction as soon as possible during normal working hours. The notification must contain a statement giving all pertinent facts, including the estimated duration of the breakdown. ~~On receipt of this notification, the department may permit the continuance of the operation for a period not to exceed ten days provided that written application is made to the department. Such application shall be made within twenty-four hours of the malfunction or within such other time period as the department may specify. In cases of major equipment failure, additional time period may be granted by the department provided a corrective program has been submitted by the person and approved by the department. The department shall be notified when the condition causing the malfunction has been corrected.~~
- b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at 701-328-5188. After hours the department can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is 701-328-9921.
- c. Unavoidable malfunction. The owner or operator of a source that believes any excess emissions resulted from an unavoidable malfunction shall submit a written report to the department which includes evidence that:

- (1) The malfunction was beyond the reasonable control of the owner or operator.
- (2) The excess emissions could not have been avoided by better operation, maintenance or adequate design of the malfunctioning component.
- (3) To the extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions.
- (4) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and possible.
- (5) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality.
- (6) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning equipment.

The report shall be submitted by the end of the next reporting period for the source or within thirty days of a written request by the department, whichever is sooner.

The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that an unavoidable equipment malfunction occurred. The Department may elect not to pursue enforcement action after considering whether excess emissions resulted from an unavoidable equipment malfunction. The Department will evaluate, on a case-by-case basis, the information submitted by the owner or operator to determine whether to pursue enforcement action.

3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method, ~~acceptable to the~~

~~department,~~ for measuring or estimating emissions must be undertaken as soon as possible. The owner or operator of a source that uses an alternative method shall demonstrate to the department that the method is accurate. Timely repair of the emission monitoring system must be made.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1992; September 1, 1997; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-01-14. Time schedule for compliance. Except as otherwise specified, compliance with the provisions of this article shall be according to the following time schedule:

1. **New installations.** Every new installation shall comply as of going into continuous routine operation for its intended purpose.
2. **Existing installations.** Every existing installation shall be in compliance as of July 1, 1970, unless the owner or person responsible for the operation of the installation ~~shall have~~ has submitted ~~to and received approval by the department in a form and manner satisfactory to it,~~ a program and schedule for achieving compliance, ~~such program and schedule to contain a date on or before which full compliance will be attained, and such other information as the department may require. If approved by the department, such date will be the date on which the person shall comply. The department may require persons submitting such program to submit subsequent periodic reports on progress in achieving compliance.~~

General Authority: NDCC 23-25-03, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-01-15. Prohibition of air pollution.

1. No person shall permit or cause air pollution, as defined in section 33-15-01-04.

2. Nothing in any other part of this article concerning emission of air contaminants or any other regulation relating to air pollution shall in any manner be construed as authorizing or legalizing the creation or maintenance of air pollution.

History: Amended effective June 1, 1990; September 1, 1997; June 1, 2001.

General Authority: NDCC 23-25-03, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-01-16. Confidentiality of records.

1. **Public inspection.** Any record, report, or information obtained or submitted pursuant to this article will be available to the public for inspection and copying during normal working hours unless the department certifies that the information is confidential. Anyone requesting department assistance in collecting, copying, certifying, or mailing public information must tender, in advance, the reasonable cost of those services.
2. **Information submitted as trade secrets.** The department may certify records, reports, or information, or particular part thereof, other than emission data, as confidential upon a showing that the information would, if made public, divulge methods or processes entitled to protection as trade secrets. Any person submitting trade secret information must present the information to the department in a sealed envelope marked "CONFIDENTIAL". Each page of any document claimed confidential must be clearly marked with the word "CONFIDENTIAL". The submission must contain two parts:
 - a. The material claimed to contain trade secret information; and
 - b. A request for confidential treatment including:
 - (1) All information for which no claim is being made;
 - (2) An affidavit stating how and why the information fulfills the conditions of confidentiality under this subsection; and

(3) An index to and summary of the information submitted which is suitable for release to the public.

3. **Accepted trade secret claims.** All information which meets the test of subsection 2 must be marked by the department as "ACCEPTED" and protected as confidential information.
4. **Rejected trade secret claims.** If the department determines that information submitted pursuant to subsection 2 does not meet the criteria of that subsection for confidential treatment, the department shall promptly notify the person submitting the information of that determination. The department shall in that event give that person at least twenty days in which to:
 - a. Accept the determination of the department;
 - b. Request that the information be returned to the person;
 - c. Further justify the contention that the information deserves protection as a trade secret; or
 - d. Further limit the scope of information for which a claim of confidentiality is made.

If the person who submitted the information fails within the time period allowed by the department to demonstrate satisfactorily to the department that the information in the form presented qualifies for confidential treatment, the department shall promptly notify that person of that determination. If the person submitting the information did not request that it be returned, the department shall mark the information "REJECTED" and treat it as public information. The department's action on a reconsideration constitutes final agency action for purposes of judicial review. Appeal of this action must be to an appropriate district court.

5. **Appeal of nondisclosure claims.** Any person who identifies and tenders the reasonable cost of collecting, copying, certifying, and mailing particular information held by the department under subsection 2 may file with the department a petition for reconsideration stating how and why the public's interest would be better served by

the release of the requested information than by its retention as confidential by the department. The department shall then reconsider the confidential status of the information. The department action on a petition for reconsideration constitutes final agency action for purposes of judicial review. Appeal of the department's action must be to an appropriate district court.

6. **Retention of confidential information.** All information which is accepted by the department as confidential must be stored in locked filing cabinets. Only those personnel of the department specifically designated by the department shall have access to the information contained therein. The department may not designate any person to have access to confidential information unless that person requires such access in order to carry out that person's responsibilities and duties. No person may disclose any confidential information except in accordance with the provisions of this section. No copies may be made except as strictly necessary for internal department use or as specified in subsection 8.
7. **Maintenance of log.** Persons designated by the department to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the date of such access.
8. **Transmittals of confidential information.** As necessary, confidential information acquired by the department under the provisions of the act, or this article, may be transmitted to such federal, state, or local agencies, when necessary for purposes of administration of any federal, state, or local air pollution control laws, which make an adequate showing of need to the department, provided that such transmittal is made under a continuing assurance of confidentiality.
9. **Relationship to issuance of permits.** The department may not process any application for a permit to construct or operate pursuant to chapter 33-15-14 or 33-15-15 until final agency action on confidential trade secret claims has been completed.

History: Effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-06

33-15-01-17. Enforcement.

1. Enforcement action will be consistent with procedures as approved by the United States environmental protection agency.
2. Notwithstanding any other provision in this article, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of this article.
 - a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:
 - (1) A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.
 - (2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated in a federally enforceable title V permit to operate.
 - (3) Compliance test methods specified in this article.
 - b. The following testing, monitoring, and information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:
 - (1) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 50, 51, 60, 61, 63, and 75.
 - (2) Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in paragraph 1 or in subdivision a.
3. a. No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this article.

- b. No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring device or method required under this article.

History: Effective June 1, 1990; amended effective December 1, 1994; September 1, 1997; March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-01-18. Compliance certifications. Notwithstanding any other provision in this article, for the purpose of submission of compliance certifications the owner or operator is not prohibited from using the following in addition to any specified compliance methods:

1. A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33-15-14-06.
2. Any other monitoring method approved for the source under paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated into a federally enforceable title V permit to operate.

History: Effective December 1, 1994; amended effective March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-02
AMBIENT AIR QUALITY STANDARDS

Section	
33-15-02-01	Scope
33-15-02-02	Purpose
33-15-02-03	Air Quality Guidelines
33-15-02-04	Ambient Air Quality Standards
33-15-02-05	Methods of Sampling and Analysis
33-15-02-06	Reference Conditions
33-15-02-07	Concentrations of Air Contaminants in the Ambient Air Restricted

33-15-02-01. Scope. The ambient air quality standards as presented in this chapter pertain to the ambient air within the boundaries of North Dakota.

History: Amended effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-02-02. Purpose. It is the purpose of these air quality standards to set forth levels of air quality for the maintenance of public health and welfare and to provide guidance to governmental and other parties interested in abating air pollution. Since the ambient air in North Dakota is generally cleaner than these standards, the standards are not a permit for the unnecessary degradation of air quality.

History: Amended effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-02-03. Air quality guidelines. In keeping with the purpose of these ambient air quality standards, the quality should be such that:

1. The public health will be protected including sensitive or susceptible segments of the population.
2. Concentrations of pollutants will not cause public

nuisance or annoyance.

3. Agricultural crops, animals, forest, and other plant life will be protected.
4. Visibility will be protected.
5. Metals or other materials will be protected from abnormal corrosion or damage.
6. Fabrics will not be soiled, deteriorated, or their colors affected.
7. Natural scenery will not be obscured.

History: Amended effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-02-04. Ambient air quality standards.

1. **Particulates and gases.** Except as provided in section 33-15-02-07, the standards of ambient air quality listed in table 1 define the limits of air contamination by particulates and gases. Any air contaminant which exceeds these limits is hereby declared to be unacceptable and requires air pollution control measures. The stated limits include normal background levels of particulates and gases.
2. **Radioactive substances.** The ambient air shall not contain any radioactive substances exceeding the concentrations specified in article 33-10.
3. **Other air contaminants.** The ambient air shall not contain air contaminants in concentrations that would be injurious to human health or well-being or unreasonably interfere with the enjoyment of property or that would injure plant or animal life. The department may establish, on a case-by-case basis, specific limits of concentration for these contaminants.

History: Amended effective October 1, 1987; January 1, 1989; September 1, 1998.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-02-05. Methods of sampling and analysis. Air contaminants listed under table 1 shall be measured by the method or methods listed in title 40, Code of Federal Regulations, parts 50 and 53. Hydrogen sulfide sampling equipment and methods must be approved by the department. Hydrogen sulfide analyzers must be designed for use as ambient air quality monitors and must be capable of meeting performance specifications as determined by the department.

The sampling and analytical procedures employed and the number, duration, and location of samples to be taken to measure ambient levels of air contaminants shall be consistent with obtaining results which are precise, accurate, and representative of the conditions being evaluated.

History: Amended effective October 1, 1987; December 1, 1994.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-02-06. Reference conditions. The standards of ambient air quality listed in table 1 are corrected to a reference temperature of twenty-five degrees Celsius [298 degrees Kelvin] and a reference pressure of seven hundred sixty millimeters of mercury [101.3 kilopascals].

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-02-07. Concentrations of air contaminants in the ambient air restricted.

1. Except as provided in subsections 3 and 4, no person may cause or permit the emission of contaminants to the ambient air from any source in such a manner and amount that causes or contributes to a violation in the ambient air of those standards stated in section 33-15-02-04.
2. Nothing in any other part or section of this article may in any manner be construed as authorizing or legalizing

the emission of air contaminants in such manner as prohibited in subsections 1, 3, and 4.

3. No person may cause or permit the emission of sulfur oxides (sulfur dioxide) to the ambient air from any coal conversion facility or petroleum refinery in such a manner or amount that causes or contributes to a violation in the ambient air of the national ambient air quality standards for sulfur oxides (sulfur dioxide) in title 40, Code of Federal Regulations, part 50, sections 4 and 5. The national ambient air quality standards for sulfur oxides (sulfur dioxide) are summarized in table 2.

Sources subject to this subsection must also comply with the prevention of significant deterioration increments in chapter 33-15-15.

4. In the case of malfunctions and maintenance shutdowns of an installation as specified in section 33-15-01-13, the department may permit the one-hour and twenty-four-hour sulfur dioxide ambient air quality standards of table 1 to be exceeded provided it has been demonstrated that the three-hour and twenty-four-hour national sulfur dioxide air quality standards will not be exceeded and all reasonable measures will be taken to minimize the quantity of emissions and the length of the malfunction or shutdown period.

History: Amended effective October 1, 1987; September 1, 1998.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

Table 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)	
Particulates		
PM ₁₀	50	micrograms per cubic meter of air, expected annual arithmetic mean
	150	micrograms per cubic meter of air, maximum 24-hour average concentration with no more than one expected exceedance per year <u>micrograms per cubic meter, 24 hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is equal to or less than one.</u>
PM _{2.5}	15.0	<u>micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 15.0 micrograms per cubic meter.</u>
	35	<u>micrograms per cubic meter 24-hour average concentration. The standard is met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.</u>

.....
Sulfur Dioxide 0.023 parts per million (60 micrograms per cubic meter of air), maximum annual arithmetic mean concentration
 0.099 parts per million (260 micrograms per cubic meter of air), maximum 24-hour average concentration
 0.273 parts per million (715 micrograms per cubic meter of air), maximum 1-hour average concentration
.....

Hydrogen Sulfide 10.0 parts per million (14 milligrams per cubic meter of air), maximum instantaneous (ceiling) concentration not to be exceeded
 0.20 parts per million (280 micrograms per cubic meter of air), maximum 1-hour average concentration not to be exceeded more than once per month
 0.10 parts per million (140 micrograms per cubic meter of air), maximum 24-hour average concentration not to be exceeded more than once per year
 0.02 parts per million (28 micrograms per cubic meter of air), maximum arithmetic mean concentration averaged over three consecutive months
.....

Carbon Monoxide 9 parts per million (10 milligrams per cubic meter of air), maximum 8-hour concentration not to be exceeded more than once per year
 35 parts per million (40 milligrams per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year
.....

~~Ozone 0.12 parts per million (235 micrograms per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year~~

 0.075 parts per million (147 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The
.....

standard is met when the average of the annual fourth-highest daily maximum 8-hour average concentration at an ambient air quality monitoring site is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.

.....
Nitrogen Dioxide	0.053	parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean
.....
Lead	1.5	micrograms per cubic meter of air, maximum arithmetic mean averaged over a calendar quarter
.....

History: Amended effective December 1, 1994.

Table 2. NATIONAL AMBIENT AIR QUALITY STANDARDS

Air Contaminant	Standards (Maximum Permissible Concentrations)	
Sulfur oxides (sulfur dioxide)	0.030	parts per million (80 micrograms per cubic meter of air) maximum annual arithmetic mean concentration, not to be exceeded in a calendar year
	0.14	parts per million (365 micrograms per cubic meter of air) maximum 24-hour concentration, not to be exceeded more than once per calendar year
	0.5	parts per million (1300 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year

CHAPTER 33-15-05
EMISSIONS OF PARTICULATE MATTER RESTRICTED

Section	
33-15-05-01	Restriction of Emission of Particulate Matter From Industrial Processes
33-15-05-02	Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating
33-15-05-03	Incinerators [Repealed]
33-15-05-03.1	Infectious Waste Incinerators [Repealed]
33-15-05-03.2	Refuse Incinerators
33-15-05-03.3	Other Waste Incinerators
33-15-05-04	Methods of Measurement

33-15-05-01. Restriction of emission of particulate matter from industrial processes.

1. General provisions.

- a. This section applies to any operation, process, or activity from which particulate matter is emitted except the burning of fuel for indirect heating in which the products of combustion do not come into direct contact with process materials, the burning of refuse, and the processing of salvable material by burning.
- b. The process weight rate per hour referred to in this section shall be based upon the normal operation maximum capacity of the equipment, and if such normal maximum capacity should be increased by process or equipment changes, the new normal maximum capacity shall be used as the process weight in determining the allowable emissions.

2. Emission limitations. No person shall cause, suffer, allow, or permit the emission of particulate matter in any one hour from any source in excess of the amount shown in table 3 for the process weight allocated to such source.

a. Exceptions.

- (1) Temporary operational breakdowns or cleaning of air pollution equipment for any process are permitted provided the owner or operator immediately advises the department of the

circumstances and outlines an acceptable corrective program and provided such operations do not cause an immediate public health hazard.

(2) The department may prescribe air quality control requirements that are more restrictive and more extensive than provided in subsection 2 if the particulate matter emitted is a radioactive, toxic, or deleterious substance which may affect human health or well-being or that would cause significant damage to animal or plant life.

(3) Any existing emission source which has particulate collection equipment with a collection efficiency of ninety-nine and seven-tenths percent or more by weight shall be considered as meeting the provisions of subsection 2. The efficiency of the particulate collection equipment shall be determined as outlined in section 33-15-05-04 with the process being served by the particulate collection equipment being run at normal operation maximum capacity.

(4) Any portable emission source, not operated at the same premise for more than six months, shall be considered as meeting the provisions of subsection 2 if the source stack or stacks are equipped with particulate collection efficiency of eighty-five percent or more by weight as determined in paragraph 3, and all of the following conditions are met:

(a) The source must not be located within a city.

(b) The source must not be located within one-half mile [.80 kilometers] of any occupied residence, and within one mile [1.61 kilometers] of the source there shall be no more than two occupied residences.

(c) The source must not be located within one-quarter mile [.40 kilometers] of any highway or public road.

b. Grievance procedure. If any party is aggrieved by the department's decision as referenced in paragraph 2 of subdivision a, that party may request a hearing before the department to review

such decision. Such hearing must be conducted according to article 33-22 and North Dakota Century Code chapter 28-32. If a hearing is requested the requirements of paragraph 2 of subdivision a are not effective until ordered by the department at the conclusion of the hearing process.

Table 3.

Maximum Allowable Rates of Emission of Particulate Matter from Industrial Processes

English		Metric	
Process Weight Rate (p)	Allowable Emission Rate (E)	Process Weight Rate (p)	Allowable Emission Rate (E)
tons/hr	lb/hr	metric tons/hr	kg/hr
0.05	0.551	0.045	0.25
0.25	1.62	0.23	0.74
0.50	2.58	0.45	1.16
2.50	7.58	2.27	3.43
5.00	12.05	4.54	5.46
10.00	19.18	9.07	8.67
25.00	35.43	22.68	16.03
50.00	44.58	45.36	20.21
250.00	60.96	226.80	27.65
500.00	68.96	453.59	31.29
1000.00	77.59	907.19	35.21
2500.00	90.06	2267.96	40.87

Interpolation of the data in this table for process weight rates up to 30 tons/hr [27.21 metric tons/hr] shall be accomplished by the use of the equations:

$$E = 4.10 p^{0.67} \quad (\text{English units})$$

$$E = 1.98 p^{0.67} \quad (\text{Metric units})$$

and interpolation and extrapolation of the data for process weight rates in excess of 30 tons/hr [27.21 metric tons/hr] shall be accomplished by the use of the equations:

$$E = 55.0 p^{0.11} - 40 \quad (\text{English units})$$

$$E = 25.25 p^{0.11} - 18.2 \quad (\text{Metric units})$$

where E = allowable emission rate in lb/hr [kg/hr] and p = process weight rate in tons/hr [metric tons/hr].

History: Amended effective October 1, 1987.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-08

33-15-05-02. Maximum allowable emission of particulate matter from fuel burning equipment used for indirect heating.

1. General provisions.

- a. This section applies to installations in which fuel is burned for the primary purpose of producing steam, hot water, hot air, or other indirect heating of liquids, gases, or solids and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels include those such as coal, coke, lignite, coke breeze, fuel oil, and wood but do not include refuse. When any products or byproducts of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.
- b. The maximum allowable particulate matter which may be emitted from fuel burning units at a source is determined by the maximum or manufacturer's rated heat input of each unit.
- c. Fuel burning equipment that meets the applicability requirements of subdivision a in which a gaseous fuel is burned alone or in combination with other gaseous fuels is exempt from the emission limitations in subsection 2. Fuel burning equipment that burns a gaseous fuel, or fuels, in combination with other fuels is subject to the emission limitations in subsection 2.

2. Emission limitations.

- a. Existing installations. No person shall cause or permit the emission of particulate matter, caused by combustion of fuel in any existing fuel burning equipment, from any stack or chimney in excess of eighty-hundredths pounds of particulates per million British thermal units [344 nanograms per joule] heat input. Provided, however, as technology develops for making new control equipment compatible, both technically and economically, with present plants they shall comply

with limitations on emissions of particulate matter from fuel burning installations as outlined in subdivision b when directed by the department.

- b. New installations. No person shall cause or permit the emission of particulate matter, caused by the combustion of fuel in any new fuel burning equipment, from any stack or chimney in excess of the quantity set forth in table 4.
- c. Means shall be provided in all newly constructed units and wherever practicable in existing units to allow the periodic measurement of fly ash and other particulate matter.
- d. No person may burn or cause or permit the burning of refuse, including preservative treated wood, in any installation which was designed for the sole purpose of burning fuel unless approved by the department.
- e. Existing or new installations, with a heat input of not more than ten million British thermal units per hour and sources with multiple boilers with a total aggregate heat input of not more than ten million British thermal units per hour, shall be exempt from the applicable allowable emission rate set forth in subdivision a or in table 4, respectively. These sources shall be subject to visible emission and ambient air quality standards.
- f. Any new or existing source whose heat input is greater than two hundred fifty million British thermal units per hour and is equipped with state-of-the-art control technology capable of complying with the particulate emission limitations of subparagraph 1 of paragraph a of section 60.42 of subpart D of chapter 33-15-12 [40 CFR 60.42(a)(1)] shall comply with such limitations when directed by the department.
- g. If any party is aggrieved by the department's decision as referenced in subdivision a or f, that party may request a hearing before the department to review such decision. Such hearing must be conducted according to article 33-22 and North Dakota Century Code chapter 28-32. If a hearing is requested, the emission limitations as referenced in subdivision a or f (whichever is applicable) are not effective until ordered by the department at the conclusion of the hearing process.

Table 4.

Maximum Allowable Rates of Emission of
Particulate Matter from New
Fuel Burning Equipment

Heat Input (H)	Allowable Emission Rate (E)	Heat Input (H)	Allowable Emission Rate (E)
10^6 Btu/hr	lb/ 10^6 Btu	joules/hr	nanogram/ joule
10 or less	0.600	1.05×10^{10}	258
20	0.548	2.11×10^{10}	235
30	0.519	3.16×10^{10}	224
40	0.500	4.22×10^{10}	215
50	0.486	5.27×10^{10}	209
100	0.444	1.05×10^{11}	191
150	0.421	1.58×10^{11}	181
200	0.405	2.11×10^{11}	174
250	0.394	2.64×10^{11}	169

Interpolation and extrapolation of the data in this table shall be accomplished by the use of equations:

$$E = 0.811 H^{-0.131} \quad (\text{English units})$$

$$E = 5307 H^{-0.131} \quad (\text{Metric units})$$

where E = allowable emission rate in lb/million Btu of heat input [nanogram/joule] and H = heat input in millions of Btu/hr [joules/hr].

History: Amended effective October 1, 1987; June 1, 1990; June 1, 1992; March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-08

33-15-05-03. Incinerators. [Repealed effective August 1, 1995].

33-15-05-03.1 Infectious waste incinerators. Repealed effective July 12, 2000.

33-15-05-03.2. Refuse incinerators.

1. Applicability.

- a. The owner or operator of an incinerator of any design capacity for refuse, except trash and refuse derived fuel, must comply with 40 CFR part 60, subpart Ea, which is incorporated by reference in chapter 33-15-12.
- b. Beginning August 1, 1996, no owner or operator of an incinerator for refuse may incinerate materials of any type or form which are recyclable, unless the owner demonstrates to the department that recycling for a waste material is not reasonably available. Documents subject to state or federal privacy regulations may be incinerated when no other acceptable method of disposal is reasonably available.
- c. Beginning August 1, 1997, each existing incinerator for trash must meet the same standards as a new incinerator for trash.
- d. As used in this section, "new incinerator" means an incinerator, the construction for which has not been approved by the department prior to August 1, 1995.

2. Existing trash incinerators. This subsection applies to an owner or operator of an incinerator for trash of any design capacity existing on August 1, 1995.

- a. Prohibited waste. No infectious waste, radioactive waste, hazardous waste, special waste, industrial waste, or any other solid waste may be burned in an incinerator designed for trash unless the incinerator's performance, design, and operating standards for those solid wastes are also met.
- b. Operator training. The owner or operator of an incinerator for trash shall provide both written and oral instructions for each operator in the proper operation of the incinerator.
- c. Recordkeeping and reporting.

- (1) The owner or operator of an incinerator for trash shall keep a log indicating the dates and approximate quantities of waste received from an onsite source, and from each offsite source, including the transporter. The log shall be kept and maintained for a minimum period of three years from the date waste is received.
- (2) An owner or operator of an incinerator for trash shall record in the log any operational error or failure of one-hour or more duration of combustion equipment, emission control equipment, waste charging equipment, or monitoring equipment.
- (3) When requested by the department, the owner or operator of an incinerator for trash shall provide a summary of the daily burning and hours of operation.

~~d. Malfunctions. An owner or operator of an incinerator for trash shall immediately halt all waste charging of an incinerator when a malfunction of combustion equipment, emission control equipment, monitoring equipment, or waste charging equipment occurs. Waste charging may not resume until the malfunction has been corrected or the department approves the operation of the incinerator while the malfunction is occurring.~~

3. **New trash incinerators.** In addition to subsection 2, this subsection applies to an owner or operator of a new incinerator for trash.

- a. Design. Each new incinerator for trash must be equipped with a primary combustion chamber or zone which provides complete combustion of solid waste and a secondary combustion chamber or zone which provides turbulent mixing. Auxiliary fuel burners are required in all chambers. The department may approve an alternate design provided the design achieves the performance requirements of this section.
- b. Opacity. No owner or operator of a new incinerator for trash may allow to be discharged into the atmosphere any air contaminant which exhibits an opacity greater than ten percent except that a maximum of twenty percent opacity is permissible for not more than one 6-minute period per hour.

- c. Operating temperature. Each new incinerator for trash shall maintain the flue gas temperature in the secondary combustion chamber or zone at one thousand five hundred degrees Fahrenheit [815 degrees Celsius] or greater for a minimum of one-half-second retention time.
- d. Monitoring. Each new incinerator for trash shall be equipped with a continuous temperature monitor, with readout, to monitor the temperature of the gases exiting the secondary combustion chamber or zone.
- e. Stack height. Each new incinerator for trash shall be equipped with a stack for the discharge of flue gases of sufficient height to prevent ambient concentrations of air contaminants greater than allowed by chapter 33-15-02. The minimum stack height is forty feet [12.2 meters] unless it is demonstrated that a stack height less than forty feet [12.2 meters] will meet the standards of chapter 33-15-02. The department may require taller stacks when it is necessary to meet the standards of chapter 33-15-02.
- f. Waste charging.
 - (1) The waste charging system for a new incinerator for trash must be designed to prevent disruption of the combustion process as waste is charged.
 - (2) The waste charging system must be designed to prevent overcharging to assure complete combustion. No owner or operator may cause an incinerator for trash to operate at a load greater than one hundred percent of design capacity.

History: Effective August 1, 1995.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-04, 23-25-04.1

33-15-05-03.3 Other waste incinerators.

- 1. **Salvage incinerators.** The department may require construction, operational, and recordkeeping standards and procedures for salvage incinerators. No industrial waste, radioactive waste, hazardous waste, or infectious

waste may be burned in a salvage incinerator, unless specifically approved by the department.

2. **Air curtain destructors.** The department may require construction, operational, and recordkeeping standards materials to be destroyed by burning and site location.
3. **Industrial waste and special waste incinerators.** The department may require construction, operational, emission, monitoring, recordkeeping, and reporting standards and procedures for incinerators of industrial waste based upon factors such as characteristics and quantities of the industrial waste and site location.
4. **Crematoriums.**
 - a. No owner or operator of combustion units operated as a human or animal crematorium or in an animal farm operation for animal disposal may burn any other type or form of materials or solid waste unless specifically approved by the department.
 - b. No owner or operator of a crematorium may allow to be discharged into the atmosphere any air contaminant, which exhibits an opacity greater than ten percent except that a maximum of twenty percent is permissible for not more than one 6-minute period per hour.
 - c. A crematorium constructed and operated after August 1, 1995 must be equipped with two or more chambers and with auxiliary fuel burners, designed to assure a temperature in a secondary chamber of at least one thousand six hundred degrees Fahrenheit [871 degrees Celsius] for a minimum of one second retention time.
 - d. Monitoring. Each new crematorium must be equipped with a continuous temperature monitor, with readout, to monitor the temperature of the gases exiting the secondary combustion chamber or zone. Each human crematorium installed or reinstalled after September 1, 2002, must be equipped with a temperature recorder.
 - e. Charging. A crematorium must be charged in accordance with the manufacturer's procedures or recommendations. Deviations from these procedures or recommendations are allowed provided credible evidence has been submitted to the department that indicates the deviations will reduce air contaminant emissions. Such evidence shall be provided prior to implementation of the deviations.

- f. Operation. Operators of human crematoriums shall be trained in the proper operation of the unit. A copy of the operation and maintenance manual for the unit shall be available onsite. A trained crematorium operator must be onsite at a human crematorium while the cremation process is taking place.
- g. General. The department may establish additional construction, operational, emission, monitoring, recordkeeping and reporting standards and procedures for crematoriums based upon factors such as quantities of material charged, emissions, and site location.

History: Effective August 1, 1995; September 1, 1997; March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-04, 23-25-04.1

33-15-05-04. Methods of measurement.

- 1. The reference methods in appendix A to chapter 33-15-12, its replacement or other methods, as approved by the department shall be used to determine compliance with sections 33-15-05-01 and 33-15-05-02 as follows:
 - a. Method 1 for selection of sampling site and sample traverses.
 - b. Method 2 for determination of stack gas velocity and volumetric flow rate.
 - c. Method 3 for gas analysis.
 - d. Method 4 for determination of moisture in the stack gas.
 - e. Method 5 for concentration of particulate matter and the associated moisture content. The sampling time for each run shall be at least sixty minutes and the minimum sampling volume shall be thirty dry cubic feet at standard conditions [0.85 dry cubic meter at standard conditions] except that smaller sampling times or volumes when necessitated by process variables or other factors may be approved by the department.
 - (1) For each run using method 5 for fuel burning equipment, the emissions expressed in pounds per million British thermal units [nanograms

per joule] shall be determined by the following procedures:

$$E = CF_d \left(\frac{20.9}{20.9 - \%O_2} \right) \text{ or } E = CF_c \left(\frac{100}{\%CO_2} \right)$$

where:

- (a) E = pollutant emission, lb/million Btu [ng/j].
- (b) C = pollutant concentration, lb/dscf [ng/dscm].
- (c) %O₂ = oxygen content by volume, dry basis.
- (d) %CO₂ = carbon dioxide content by volume, dry basis.

The percent oxygen and percent carbon dioxide shall be determined by using the integrated or grab sampling and analysis procedures of method 3, 3A, 3B, or 3C, as appropriate, by traversing the duct at the same sampling locations used for each run of method 5.

- (e) F_d and F_c = factors as listed in method 19 appendix A of chapter 33-15-12.

- (2) For each run using method 5 for industrial processes, the emission rate expressed in pounds per hour shall be determined by the equation, lb/hr = (Q_s)(c) where:

Q_s = volumetric flow rate of the total effluent in dscf/hr and

c = particulate concentration in lb/dscf

- 2. The heat content of fuels shall be determined in accordance with A.S.T.M. methods D2015-66(72) (solid fuels), D240-64(73) (liquid fuels), or D1826-64(70) (gaseous fuels) as applicable.
- 3. The determination of particulate matter emissions with an aerodynamic diameter less than ten micrometers [PM₁₀] must be made in accordance with the methods established in 40 Code of Federal Regulations, part 51, appendix M, as applicable.

History: Amended effective October 1, 1987; June 1, 1992; June 1, 2001; March 1, 2003.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

CHAPTER 33-15-12
STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Section

33-15-12-01 General Provisions [Repealed]
33-15-12-01.1 Scope
33-15-12-02 Standards of Performance
33-15-12-03 [Reserved]
33-15-12-04 Standards of Performance [Repealed]

33-15-12-01. General provisions. Repealed effective June 1, 1992.

33-15-12-01.1. Scope. Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60 (40 CFR 60) as they exist on ~~January 31, 2006~~ March 1, 2008, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-12-02. Standards of Performance.

Subpart A - General provisions.

*60.2. The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

Subpart C - Emission guidelines and compliance times.

Subpart Cc - Emissions guidelines and compliance times for municipal solid waste landfills.

Designated facilities to which this subpart applies shall comply with the requirements for state plan approval in 40 CFR parts 60.33c, 60.34c and 60.35c. except that quarterly surface monitoring for methane under part 60.34c shall only be required during the second, third, and fourth quarters of the calendar year.

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.
2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.
3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.
4. Complete onsite construction or installation of the air pollution control device or devices or process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.
5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.
6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

Subpart Ce - Emission guidelines and compliance times for hospital/medical/infectious waste incinerators.

Except as noted below, designated facilities to which this rule applies shall comply with the minimum requirements for state plan approval listed in subpart Ce.

*60.32e(i) The following is added:

Title V permit to operate applications shall be submitted by September 15, 1999.

*60.39e(a) is deleted in its entirety.

*60.39e(b) is deleted in its entirety and replaced with the following:

(b) Except as provided in paragraphs c and d of this section, designated facilities shall comply with all requirements of this subpart within one year of the United States environmental protection agency's approval of the state plan for hospital/medical/infectious waste incinerators regardless of whether a designated facility is identified in the state plan. Owners or operators of designated facilities who will cease operation of their incinerator to comply with this rule shall notify the department of their intention within six months of state plan approval.

*60.39e(c) is deleted in its entirety and replaced with the following:

(c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the state plan, but not later than September 16, 2002, provided the facility owner or operator complies with the following:

1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.

2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device(s) within nine months of state plan approval.
3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.
4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.
5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.
6. Begins initiation of site preparation for installation of the air pollution control device within twenty-two months after state plan approval.
7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.
8. Starts up the air pollution control device within twenty-eight months after state plan approval.
9. Notifies the department of the performance test thirty days prior to the test.
10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.
11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.

*60.39e(d) is deleted in its entirety and replaced with the following:

1. Designated facilities petitioning for an extension of the compliance time in paragraph b of this section shall:
 - i. Within six months after the United States environmental protection agency's approval of the state plan, submit documentation of the analyses undertaken to support the need for more than one year to comply, including an explanation of why up to three years after United States environmental protection agency approval of the state plan is sufficient to comply with this subpart while one year is not. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and
 - ii. Documentation of measurable and enforceable incremental steps of progress to be taken toward compliance with this subpart.
2. The department shall review any petitions for the extension of compliance times within thirty days of receipt of a complete petition and make a decision regarding approval or denial. The department shall notify the petitioner in writing of its decision within forty-five days of the receipt of the petition. All extension approvals must include incremental steps of progress. For those sources planning on installing air pollution control equipment to comply with this subpart, the incremental steps of progress included in 40 CFR 60.39e(c) shall be included as conditions of approval of the extension.
3. Owners or operators of facilities which received an extension to the compliance time in this subpart shall be in compliance with the applicable requirements on or before the date three years after United States environmental protection agency approval of the state plan but not later than September 16, 2002.

*60.39e(f) is deleted in its entirety.

After the compliance dates specified in this subpart, an owner or operator of a facility to which this subpart applies shall not operate any such unit in violation of this subpart.

Subpart D - Standards of performance for fossil-fuel fired steam generators for which construction is commenced after August 17, 1971.

Subpart Da - Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978.

*The limits and other requirements for mercury are deleted.

Subpart Db - Standards of performance for industrial-commercial-institutional steam generating units.

Subpart Dc - Standards of performance for small industrial-commercial-institutional steam generating units.

Subpart E - Standards of performance for incinerators.

Subpart Ea - Standards of performance for municipal waste combustors for which construction is commenced after December 20, 1989, and on or before September 20, 1994.

Subpart Ec - Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996.

Subpart F - Standard of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart H - Standards of performance for sulfuric acid plants.

Subpart I - Standards of performance for hot mix asphalt facilities.

Subpart J - Standards of performance for petroleum refineries.

Subpart K - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

*60.110(c) is deleted in its entirety and replaced with the following:

(c) Any facility under part 60.110(a) that commenced construction, reconstruction, or modification after July 1, 1970, and prior to May 19, 1978, is subject to the requirements of this subpart.

Subpart Ka - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984.

Subpart Kb - Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

Subpart O - Standards of performance for sewage treatment plants.

Subpart T - Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

Subpart U - Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

Subpart V - Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

Subpart W - Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

Subpart X - Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

Subpart AA - Standards of performance for steel plants: electric arc furnaces: constructed after October 21, 1974, and before August 17, 1983.

Subpart AAa - Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

Subpart EE - Standards of performance for surface coatings of metal furniture.

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

Subpart KK - Standards of performance for lead-acid battery manufacturing plants.

Subpart LL - Standards of performance for metallic mineral processing plants.

Subpart MM - Standards of performance for automobile and light-duty truck surface coating operations.

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

Subpart QQ - Standards of performance for the graphic arts industry: publication rotogravure printing.

Subpart RR - Standards of performance for pressure sensitive tape and label surface coating operations.

Subpart SS - Standards of performance for industrial surface coating: large appliances.

Subpart TT - Standards of performance for metal coil surface coating.

Subpart UU - Standards of performance for asphalt processing and asphalt roofing manufacture.

Subpart VV - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in the synthetic organic chemicals manufacturing industry.

Subpart WW - Standards of performance for the beverage can surface coating industry.

Subpart XX - Standards of performance for bulk gasoline terminals.

Subpart AAA - Standards of performance for new residential wood heaters.

Subpart BBB - Standards of performance for the rubber tire manufacturing industry.

Subpart CCC - [Reserved]

Subpart DDD - Standards of performance for volatile organic compound (VOC) emissions for the polymer manufacturing industry.

Subpart EEE - [Reserved]

Subpart FFF - Standards of performance for flexible vinyl and urethane coating and printing.

Subpart GGG - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions in petroleum refineries.

Subpart HHH - Standards of performance for synthetic fiber production facilities.

Subpart III - Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

Subpart JJJ - Standards of performance for petroleum drycleaners.

Subpart KKK - Standards of performance for equipment leaks of volatile organic compound (VOC) emissions from onshore natural gas processing plants.

Subpart LLL - Standards of performance for onshore natural gas processing; SO₂ emissions.

Subpart NNN - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

Subpart OOO - Standards of performance for nonmetallic mineral processing plants.

Subpart PPP - Standard of performance for wool fiberglass insulation manufacturing plants.

Subpart QQQ - Standards of performance for volatile organic compound (VOC) emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

Subpart SSS - Standards of performance for magnetic tape coating facilities.

Subpart TTT - Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

Subpart UUU - Standards of performance for calciners and dryers in mineral industries.

Subpart VVV - Standards of performance for polymeric coating of supporting substrates facilities.

Subpart WWW - Standards of performance for municipal solid waste landfills.

Subpart AAAA - Standards of performance for small municipal waste combustion units for which construction is commenced after August 30, 1999, or for which modification or reconstruction is commenced after June 6, 2001.

Subpart CCCC - Standards of performance for commercial and industrial solid waste incineration units for which construction is commenced after November 30, 1999 or for which modification or reconstruction is commenced on or after June 1, 2001.

Subpart DDDD - Emission guidelines and compliance times for commercial and industrial solid waste incinerator units that commenced construction on or before November 30, 1999.

Except as provided below, designated facilities to which this rule applies shall comply with 40 CFR 60.2575 through 60.2875, including tables 1 through 5.

In the rule, you means the owner or operator of a commercial or industrial solid waste incineration unit.

Table 1 of the rule is deleted and replaced with the following:

Table 1 to Subpart DDDD - Model Rule
 Increments of Progress and Compliance Schedules

Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan.....	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2 - Final compliance.....	Three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

~~Subpart HHHH - Emission guidelines and compliance times for coal-fired electric steam generating units.~~

~~Designated facilities to which the rule applies shall comply with the applicable requirements of 40 CFR 60.4101 through 60.4124 and 60.4140 through 60.4176.~~

~~Allocation of the mercury allowances shall be in accordance with 40 CFR 60.4142, except that in 2008 and annually thereafter the adjusted control period heat input for units commencing operations before January 1, 2001, must be recalculated annually and the allowance allocation for all units adjusted accordingly. In the recalculation of the adjusted control period heat input, the control period heat input for 2000 through 2004 must be used, however, the adjusted control period heat input must be recalculated using the average heat input for the different types of fuels combusted during the three year period just prior to the year in which the allocations are made, using the factors provided in 40 CFR 60.4142(a).~~

~~Alternatively, a contract to provide fuel for heat input to a unit during the year to which the allowance allocation will apply may be used to establish the adjusted control period heat input for that year if the contract is in effect and enforceable at the time the allowance allocation is made. If the budget unit does not combust the types of fuels provided for in the contract in the applicable year, the next allowance allocation for such unit shall be reduced by the amount of any excess allowances allocated. Any allowances due to this reduction shall be reallocated to the remaining budget units in proportion to their allowance allocation in the year in which the contract was not fulfilled.~~

~~The allowance allocations will be reported to the environmental protection agency administrator by October 31 of each year beginning in 2008 as provided in 40 CFR 60.4141.~~

~~Appendix A - Test methods.~~

~~Appendix B - Performance specifications.~~

~~Appendix C - Determination of emission rate change.~~

~~Appendix D - Required emission inventory information.~~

~~Appendix E - [Reserved]~~

~~Appendix F - Quality assurance procedures.~~

~~Appendix I - Removable label and owner's manual.~~

Subpart KKKK - Standards of performance for stationary combustion turbines.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-12-03. [Reserved]

33-15-12-04. Standards of performance. Repealed effective June 1, 1992.

CHAPTER 33-15-13
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Section	
33-15-13-01	General Provisions [Repealed]
33-15-13-01.1	Scope
33-15-13-01.2	Emission Standards
33-15-13-02	Emission Standard for Asbestos
33-15-13-03	Emission Standard for Beryllium [Repealed]
33-15-13-04	Emission Standard for Beryllium Rocket Motor Firing [Repealed]
33-15-13-05	Emission Standard for Mercury [Repealed]
33-15-13-06	Emission Standard for Vinyl Chloride [Repealed]
33-15-13-07	Emission Standard for Equipment Leaks (Fugitive Emissions Sources) of Benzene [Repealed]
33-15-13-08	Emission Standard for Equipment Leaks (Fugitive Emission Sources) [Repealed]

33-15-13-01. General provisions. Repealed effective June 1, 1992.

33-15-13-01.1 Scope. The subparts and appendices of 40 Code of Federal Regulations, part 61 [40 CFR 61] as they exist on ~~January 31, 2006~~ March 1, 2008, which are listed under section 33-15-13-01.2 of this chapter are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; April 1, 1998; September 1, 2002; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-13-01.2. Emission Standards.

Subpart A - General provisions.

*61.02 - The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

The following definition is added:

"Waiver of compliance" means a permit to operate with a compliance schedule.

*Sections 61.07 and 61.08 are deleted in their entirety and replaced with the following:

Application for permit to construct. The owner or operator of any new source to which a standard prescribed under these subparts is applicable, prior to the date on which construction or modification is planned to commence, shall apply for and receive a permit to construct as provided in section 33-15-14-02. For those sources on which construction or modification has commenced and initial startup has not occurred prior to the effective date of a standard of this chapter, the owner or operator shall apply for a permit to construct within thirty days after the effective date of the standard.

Neither the submission of an application for a permit to construct nor the administrator's approval of construction or modification shall:

- 1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this chapter or of any other applicable federal, state or local requirement; or
- 2) Prevent the administrator from implementing or enforcing this chapter or taking any other action under this article.

*61.09(b) is deleted in its entirety.

*61.11(f) is deleted in its entirety and replaced with the following:

- (f) The granting of a permit under this section does not abrogate the department's authority under section 33-15-01-06 and subsection 9 of section 33-15-14-02, and subsection 6 of section 33-15-14-03.

*61.16 is deleted in its entirety and replaced with the following:

Availability of Information.

- a. Emission data provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter shall be available to the public.
- b. Any records, reports, or information, other than emission data, provided to, or otherwise obtained by, the department in accordance with the provisions of this chapter shall be available to the public, except that upon a showing satisfactory to the department by any person that such records, reports, or information, or particular part thereof (other than emission data), if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the department will consider such records, reports, or information, or particular part thereof, confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such records, reports, or information, or particular part thereof, may be disclosed to other officers, employees, or authorized representatives of the state and federal government concerned with carrying out the provisions of North Dakota Century Code chapter 23-25 or when relevant in any proceeding under North Dakota Century Code chapter 23-25.

*61.17 is deleted in its entirety.

Subpart G - [Reserved]

Subpart J - National emission standard for equipment leaks (fugitive emission sources) of benzene.

Subpart S - [Reserved]

Subpart U - [Reserved]

Subpart V - National emission standard for equipment leaks (fugitive emission sources).

Subpart FF - National emission standard for benzene waste operations

Appendix A - National emission standards for hazardous air pollutants, compliance status information.

Appendix B - Test methods.

Appendix C - Quality assurance procedures.

History: Effective June 1, 1992; amended effective March 1, 1994; April 1, 1998; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-13-02. Emission standard for asbestos.

1. Applicability. The provisions of this section are applicable to those sources specified in subsections 3 through 17.
2. Definitions. All terms that are used in this section and are not defined below are given the same meaning as in North Dakota Century Code chapter 23-25 and in section 33-15-13-01.2.
 - a. "Active waste disposal site" means any disposal site other than an inactive site.
 - b. "Adequately wet" means to sufficiently mixed or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted; however, the absence of visible emissions is not sufficient evidence of being adequately wet.
 - c. "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.
 - d. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, operation and maintenance, handling, or disposal of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.

- e. "Asbestos abatement project designer" means any person who develops the plans, specifications, and designs for an asbestos abatement project.
- f. "Asbestos abatement project monitor" means any person, employed to monitor an asbestos removal project to ensure any of the following:
 - (1) The removal is conducted in accordance with state and federal regulations.
 - (2) State-of-the-art work practices are employed.
 - (3) The abatement is conducted as designed.
 - (4) Personal and ambient air samples are collected properly.

Persons acting as the project designer who do not ensure personal and ambient air samples are collected properly and employees of the asbestos removal contractor or facility owner are excluded from this definition.

- g. "Asbestos abatement supervisor" means any person employed by the asbestos contractor who supervises workers engaged in asbestos removal, encapsulation, enclosure, and repair. Supervisors may include those individuals with the position title of foreman, working foreman, or leadman pursuant to collective bargaining agreements.
- h. "Asbestos-containing waste material" means asbestos mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this section. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term includes regulated asbestos-containing material waste and materials contaminated with asbestos, including disposable equipment and clothing.
- I. "Asbestos contractor" means any partnership, firm, association, operation, or sole proprietorship that contracts to perform asbestos abatement for another.

- j. "Asbestos inspector" means any person who inspects facilities for asbestos-containing materials.
- k. "Asbestos management planner" means any person who develops facility plans for the management of asbestos-containing materials.
- l. "Asbestos mill" means any facility engaged in converting, or in any intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of asbestos materials is not considered a part of the asbestos mill.
- m. "Asbestos tailings" means any solid waste that contains asbestos and is a product of asbestos mining or milling operations.
- n. "Asbestos waste from control devices" means any waste material that contains asbestos and is collected by a pollution control device.
- o. "Asbestos worker" means an employee or agent of an asbestos contractor, or a public employee engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their private residence.
- p. "Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.
- q. "Category II nonfriable asbestos-containing material" means any material, excluding category I nonfriable asbestos containing material, containing more than one percent asbestos as determined using the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy that, when dry, can not be crumbled, pulverized, or reduced to powder by hand pressure or by mechanical forces expected to act on the material.

- r. "Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.
- s. "Cutting" means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.
- t. "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility, together with any related handling operations or the intentional burning of any facility.
- u. "Emergency renovation operation" means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.
- v. "Encapsulation" means a method of asbestos abatement that includes the treatment of asbestos-containing materials with a sealant material that completely surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers. A bridging encapsulant creates a membrane over the surface while a penetrating encapsulant penetrates the material and binds the material's components together.
- w. "Enclosure" means a method of asbestos abatement that includes the construction of a permanent, airtight, impermeable barrier around asbestos-containing material to prevent the release of asbestos fibers into the air.
- x. "Fabricating" means any processing (e.g., cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

- y. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units) any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to this section is not excluded, regardless of its current use or function.
- z. "Facility component" means any part of a facility including equipment.
- aa. "Friable asbestos-containing material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry. The term includes nonfriable asbestos-containing material after such previously nonfriable material becomes damaged to the extent that when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure. The percentage of asbestos is determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy. If the asbestos content is greater than zero percent, assume the material contains greater than one percent asbestos or verify the asbestos content by point counting using polarized light microscopy. If a result obtained by point count is different from a result obtained by visual estimation, the point count result will be used.
- bb. "Fugitive source" means any source of emissions not controlled by an air pollution control device.
- cc. "Glove-bag" means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Properly installed and used, glove-bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the occupational safety

and health administration's (OSHA's) final rule on occupational exposure to asbestos, appendix G, title 29, Code of Federal Regulations 1926.58.

- dd. "Grinding" means to reduce to powder or small fragments and includes mechanical chipping or drilling.
- ee. "In poor condition" means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.
- ff. "Inactive waste disposal site" means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.
- gg. "Inspection" means any activity undertaken in a school building, or a public or commercial building, to determine the presence or location, or to assess the condition of, friable or nonfriable asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by collecting samples of such material. This term includes reinspections of friable and nonfriable, known or assumed asbestos-containing material which has been previously identified. The term does not include the following:
 - (1) Periodic surveillance of the type described in title 40, Code of Federal Regulations, 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;
 - (2) Inspections performed by employees or agents of federal, state, or local governments solely for the purpose of determining compliance with applicable statutes or regulations; or
 - (3) Visual inspections of the types described in title 40, Code of Federal Regulations, 763.90(I), solely for the purpose of determining completion of response actions.
- hh. "Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

- ii. "Leaktight" means that solids or liquids cannot escape or spill out. It also means dusttight.
- jj. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operations, or any other preventable upset conditions, equipment breakdown, or process failure.
- kk. "Manufacturing" means the combining of commercial asbestos, or in the case of woven friction products, the combining of textiles containing commercial asbestos, with any other materials, including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.
- ll. "Natural barrier" means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes, or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.
- mm. "Nonfriable asbestos-containing material" means any material containing more than one percent asbestos as determined using the method specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces expected to act on the material.
- nn. "Nonscheduled renovation operation" means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.
- oo. "Outside air" means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open ferry dock.

- pp. "Owner or operator of a demolition or renovation activity" means any person who owns, leases, operates, controls, or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operations, or both.
- qq. "Particulate asbestos material" means finely divided particles of asbestos or material containing asbestos.
- rr. "Planned renovation operations" means a renovation operation, or a number of such operations, in which some regulated asbestos-containing material will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.
- ss. "Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than ten units or detached single-family homes. The term includes industrial and office buildings, residential apartment buildings and condominiums of ten or more dwelling units, government-owned buildings, colleges, museums, airports, hospitals, churches, preschools, stores, warehouses and factories. Interior space includes exterior hallways connecting buildings, porticos, and mechanical systems used to condition interior space.
- tt. "Public employee" for the purpose of this chapter means any person employed by the United States government or the state of North Dakota or any of its political subdivisions who provides service for which compensation is paid. This includes employment by appointment or election.
- uu. "Regulated asbestos-containing material (RACM)" means:
- (1) Friable asbestos material.
 - (2) Category I nonfriable asbestos-containing material that has become friable.

- (3) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading.
- (4) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces acting on or expected to act on the material in the course of demolition or renovation operations regulated by this section.
- vv. "Remove" means to take out regulated asbestos-containing material or facility components that contain or are covered with regulated asbestos-containing material from any facility.
- ww. "Renovation" means altering in any way a facility or facility components, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.
- xx. "Repair" means returning damaged asbestos-containing materials to an undamaged condition or to an intact state so as to prevent asbestos fiber release.
- yy. "Resilient floor covering" means asbestos-containing floor tile, including asphalt and vinyl floor tiles and sheet vinyl floor covering containing more than one percent asbestos as determined using polarized light microscopy according to the methods specified in appendix A, subpart F, title 40, Code of Federal Regulations, part 763, section 1, polarized light microscopy.
- zz. "Roadways" means surfaces on which motor vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.
- aaa. "Strip" means to take off regulated asbestos-containing material from any part of a facility or facility components.
- bbb. "Structural member" means any member of a facility, such as beams, walls, ceilings, floors, etc.

- ccc. "Visible emissions" means any emissions which are visually detectable without the aid of instruments, coming from regulated asbestos-containing material or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operations. This does not include condensed uncombined water vapor.
- ddd. "Waste generator" means any owner or operator of a source covered by this section whose act or process produces asbestos-containing waste material.
- eee. "Waste shipment record" means the shipping document, required to be originated and signed by the waste generator and is used to track and substantiate the disposition of asbestos-containing waste material.
- fff. "Working day" means any day Monday through Friday and includes holidays that fall on any day Monday through Friday.

3. Standard for asbestos mills.

- a. Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by subsection 13 to clean emissions containing asbestos material before they escape to, or are vented to, the outside air.
- b. Each owner or operator of an asbestos mill shall meet the following requirements:
 - (1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air-cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.
 - (2) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible

without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that can not be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

- (a) Maintenance schedule.
 - (b) Recordkeeping plan.
- (3) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a suitable form which includes the following information:
- (a) Date and time of each inspection.
 - (b) Presence or absence of visible emissions.
 - (c) Condition of fabric filters including presence of any tears, holes, and abrasions.
 - (d) Presence of dust deposits on clean side of fabric filters.
 - (e) Brief description of corrective actions taken, including date and time.
 - (f) Daily hours of operation for each air-cleaning device.
- (4) Furnish upon request and make available at the affected facility during normal business hours for inspection by the department all records required under this subdivision.
- (5) Retain a copy of all monitoring inspection records for at least two years.
- (6) Submit quarterly a copy of visible emissions monitoring records to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.

4. **Standard for roadways.** No person may surface a roadway with asbestos tailings or asbestos-containing waste material.
5. **Standard for manufacturing.**
 - a. **Applicability.** This section applies to the following manufacturing operations using commercial asbestos.
 - (1) The manufacture of cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials.
 - (2) The manufacture of cement products.
 - (3) The manufacture of fireproofing and insulating materials.
 - (4) The manufacture of friction products.
 - (5) The manufacture of paper, millboard, and felt.
 - (6) The manufacture of resilient floor covering.
 - (7) The manufacture of paints, coatings, caulks, adhesives, and sealants.
 - (8) The manufacture of plastics and rubber materials.
 - (9) The manufacture of chlorine utilizing asbestos diaphragm technology.
 - (10) The manufacture of shotgun shell wads.
 - (11) The manufacture of asphalt concrete.
 - b. **Standard.** Each owner or operator of any of the manufacturing operations to which this section applies shall either:
 - (1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or
 - (2) Use the methods specified by subsection 13 to clean emissions containing asbestos material from these operations before they escape to, or are vented to, the outside air.

- (3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air-cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emission to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.
- (4) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include, at a minimum, the following:
 - (a) Maintenance schedule.
 - (b) Recordkeeping plans.
- (5) Maintain records of the results of visible emission monitoring and air-cleaning device inspections using a suitable form which includes the following information:
 - (a) Date and time of each inspection.
 - (b) Presence or absence of visible emissions.
 - (c) Condition of fabric filters including presence of any tears, holes, and abrasions.
 - (d) Presence of dust deposits on clean side of fabric filters.
 - (e) Brief description of corrective action taken, including date and time.
 - (f) Daily hours of operation for each air-cleaning device.

- (6) Furnish upon request and make available at the affected facility during normal business hours for inspection by the department all records required under this subdivision.
- (7) Retain a copy of all monitoring and inspection records for at least two years.
- (8) Submit quarterly a copy of the visible emissions monitoring records to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.

6. **Standard for demolition and renovation.**

- a. Applicability. To determine which requirements of subdivisions a, b, and c of this subsection apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility, or part of the facility where the demolition or renovation operation will occur, for the presence of asbestos, including category I and category II nonfriable asbestos-containing material. The requirements of subdivisions b and c of this subsection apply to each owner or operator of an asbestos demolition or renovation operation, including the removal of regulated asbestos-containing material, as follows:
 - (1) For a demolition or renovation project involving the stripping or removal of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of regulated asbestos-containing material, all the procedural requirements of subdivision c apply, except for ordered demolitions as provided in paragraph 4.
 - (2) For any facility being demolished all the notification requirements of subdivision b apply.
 - (3) For a renovation project where at least one hundred sixty square feet [14.9 square meters] of regulated asbestos-containing material on facility components or at least two hundred sixty linear feet [79.3 meters] of regulated asbestos-containing material on pipes or a

total of thirty-five cubic feet [1 cubic meter] of regulated asbestos-containing material on or off facility components are to be stripped, removed, dislodged, cut, drilled or similarly disturbed at a facility all the notification requirements of subdivision b apply.

- (a) To determine whether this paragraph applies to planned renovation operations involving individual nonscheduled operations, predict the additive amount of regulated asbestos-containing material to be removed or stripped over the maximum period of time a prediction can be made, not to exceed one calendar year of January 1 through December 31.
 - (b) To determine whether this paragraph applies to emergency renovation operations, estimate the amount of regulated asbestos-containing material to be removed or stripped as a result of the sudden unexpected event that necessitated the renovation.
- (4) If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of subdivision b and paragraphs 4, 5, 6, 7, and 8 of subdivision c apply.
- (5) Owners or operators of demolition or renovation operations are exempt from the requirements of 61.05(a), 61.07, and 61.09 of the general provisions of this chapter.
- b. Notification requirements. Each owner or operator to which this section applies shall:
- (1) Provide the department with written notice of the intention to demolish or renovate.
 - (2) Indicate whether the notice is an original or a revised notification and update the notice as necessary, including when the amount of asbestos affected changes by at least twenty percent.

- (3) Postmark or deliver the notice as follows:
 - (a) At least ten working days before demolition begins, except as provided in subparagraph b.
 - (b) As early as possible before, but not later than the following working day after demolition begins if the operation is described in paragraph 4 of subdivision a or for an emergency renovation as described in subparagraph b of paragraph 3 of subdivision a of this subsection.
 - (c) At least ten working days before the end of the calendar year preceding the year for which notice is being given for renovations described in subparagraph a of paragraph 3 of subdivision a of this subsection.
 - (d) At least ten working days before renovation begins. When necessary, the department may accept a telephone notification followed by the written notification.
 - (e) In no event may an operation covered by this subsection begin on a date other than the date contained in the written notice unless the department has been supplied a properly amended notification following the timetables outlined above.
- (4) Include the following information on a notification form provided by the department:
 - (a) Name, address, and telephone number of both the owner and operator and the asbestos removal contractor.
 - (b) Description of the facility or affected part of the facility being demolished or renovated, including the size, age, and prior and present use of the facility.
 - (c) An estimate of the amount of regulated asbestos-containing material to be removed from the facility in terms of square feet, linear feet, or cubic feet,

as appropriate. Also estimate the approximate amount of category I and category II nonfriable asbestos-containing material in the affected part of the facility that will not be removed before demolition. Also provide the procedures and analytical methods used to detect the presence and determine the quantity of regulated asbestos-containing material and category I and category II nonfriable asbestos-containing material.

- (d) Location of the facility being demolished or renovated to include the street address, city, county and state.
- (e) Scheduled starting and completion dates of the asbestos abatement work or any other activity that would break up, dislodge, or similarly disturb asbestos material.
- (f) Scheduled starting and completion dates of the demolition or renovation.
- (g) Type of operation: demolition or renovation.
- (h) A description of the demolition or renovation work to be performed, including the demolition or renovation techniques and methods to be employed during the activity and a description of the affected facility components.
- (i) Description of work practices and engineering controls to be used to comply with the requirements of this section, including asbestos removal and waste handling emission control procedures.
- (j) The name and location of the waste disposal site where the asbestos-containing waste material will be deposited.
- (k) The name, address, and telephone number of the waste transporter.
- (l) For emergency renovations, provide the date and hour that the emergency

occurred, a description of the sudden unexpected event and an explanation of how the event caused an unsafe condition or would cause equipment damage or an unreasonable financial burden.

(m) Description of procedures to be followed in the event that unexpected regulated asbestos-containing material is found or category II nonfriable asbestos-containing material becomes crumbled, pulverized, or reduced to powder during the operation.

(n) For facilities described in paragraph 4 of subdivision a, the name, title, and authority of the state or local governmental representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order must be attached to the notification.

(o) A signed statement by the contractor that all asbestos abatement supervisors and asbestos workers assigned to this project are certified by the department, in accordance with subsection 16.

c. Procedures for asbestos emission control. Each owner or asbestos contractor to whom this subsection applies shall comply with the following procedures:

(1) Remove all regulated asbestos-containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing material need not be removed before demolition if:

(a) It is category I nonfriable asbestos-containing material that is not in poor condition and is not friable.

(b) It is on a facility component that is encased in concrete or other similarly hard material and adequately wetted

whenever exposed during demolition and maintained wet until it is disposed of in accordance with subsection 11.

- (c) It was not accessible for testing and therefore was not discovered before demolition began and the material cannot be safely removed. If not removed for safety reasons, these materials must be adequately wetted when exposed during demolition and maintained wet until they are disposed of in accordance with subsection 11.
 - (d) They are category II nonfriable asbestos-containing material and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.
- (2) When a facility component that contains, is covered with, or is coated with regulated asbestos-containing material is being taken out of the facility as a unit or in sections:
- (a) Adequately wet all regulated asbestos-containing material exposed during cutting or disjoining operations; and
 - (b) Carefully wrap or otherwise contain the facility member with an impermeable covering prior to the disjoining operation; and
 - (c) Carefully lower the units or sections to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the regulated asbestos-containing material.
- (3) When regulated asbestos-containing material is being stripped from a facility component while it remains in place in a facility, adequately wet the material during the stripping operation.
- (a) In renovation operations, wetting that would unavoidably damage equipment or present a safety hazard is not required if:

- [1] The owner or operator has obtained prior written approval from the department based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and
 - [2] The owner or operator uses one of the following emission control methods:
 - [a] A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air and be equipped with high efficiency particulate air filtration or be designed and operated in accordance with the requirements in subsection 13.
 - [b] A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.
 - [c] Leaktight wrapping to contain all regulated asbestos-containing material prior to dismantlement.
- (b) In renovation operations where wetting would result in equipment damage or a safety hazard and the methods allowed in subparagraph a of paragraph 3 of subdivision cannot be used, another method may be used after obtaining written approval from the department based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph 3 of this subdivision.

- (c) A copy of the department's written approval shall be kept at the work site and made available for inspection.
- (4) After a facility component covered with, coated with, or containing regulated asbestos-containing material has been taken out of the facility as units or in sections pursuant to paragraph c.(2) of this subdivision it must be kept contained in leaktight wrapping or:
- (a) Adequately wet the regulated asbestos-containing material during stripping; or
 - (b) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air and be equipped with high-efficiency particulate air filtration or be designed and operated in accordance with the requirements in subsection 13.
- (5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs 2, 3, and 4 of this subdivision) the regulated asbestos-containing material is not required to be stripped if the following requirements are met:
- (a) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material;
 - (b) The component is encased in a leaktight wrapping; and
 - (c) The leaktight wrapping is labeled according to subsection 11 during all loading and unloading operations and during storage.
- (6) For all regulated asbestos-containing material, including material that has been removed or stripped:

- (a) Adequately wet the material and ensure that it remains wet until collected for disposal in accordance with subsection 11;
- (b) Carefully lower the material to the ground or a lower floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material; and
- (c) Transport the materials to the ground via leaktight chutes or containers if they have been removed or stripped more than fifty feet [15.24 meters] above ground level and were not removed as units or in sections.

Regulated asbestos-containing material contained in leaktight wrapping that has been removed in accordance with paragraph 4 of this subdivision and subitem c of item 2 of subparagraph a of paragraph 3 of this subdivision need not be wetted.

- (7) When the temperature at the point of wetting is below zero degrees Celsius [32 degrees Fahrenheit], the owner or operator:
 - (a) Need not comply with the wetting requirements of subparagraph a of paragraph 2 of subdivision c of subsection 4 and paragraph 3 of this subdivision. The owner or operator shall comply with the other requirements in this subdivision; and
 - (b) Remove facility components containing, coated with or covered with friable asbestos materials as units or in sections to the maximum extent possible; and
 - (c) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each work day and keep daily temperature records. These records must be available for inspection by the department during

normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least two years.

- (8) No regulated asbestos-containing material shall be stripped, removed or otherwise handled or disturbed at a facility regulated by this subsection unless at least one on-site representative such as a supervisor, foreman or management level person or other authorized representative who has completed the supervisor training requirements of subparagraph a of paragraph 2 and paragraph 4 of subdivision b of subsection 16 is present. Evidence that the required training has been completed shall be posted and made available for inspection by the department at the demolition or renovation site.
 - (9) For facilities described in paragraph 4 of subdivision a, adequately wet the portion of the facility that contains friable asbestos materials during the wrecking operation.
 - (10) If a facility is demolished by intentional burning, all regulated asbestos-containing material, including category I and category II nonfriable asbestos-containing material must be removed in accordance with this subsection before burning.
 - (11) When a demolition or renovation project that involves the disturbance of regulated asbestos-containing material is conducted in the ambient air, the owner or operator shall designate the boundaries of the work area by appropriate means.
7. **Standard for spraying.** The owner or operator of an operation in which asbestos-containing materials are spray-applied shall use only those materials that contain one percent asbestos or less for spray-on application.
8. **Standard for fabricating.**
- a. **Applicability.** This subsection applies to the following fabricating operations using commercial asbestos:
 - (1) The fabrication of cement building products.

- (2) The fabrication of friction products, except those operations that primarily install asbestos friction materials on motor vehicles.
- (3) The fabrication of cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions, and ceilings for marine construction; and flow control devices for the molten metal industry.

b. Standard. Each owner or operator of any of the fabricating operations to which this subsection applies shall:

- (1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or
- (2) Use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.
- (3) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring must be by visual observation of at least fifteen seconds duration per source of emissions.
- (4) Inspect each air-cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air-cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the department, and revise as necessary, a written maintenance plan to include at a minimum, the following:

- (a) Maintenance schedule.
 - (b) Recordkeeping plan.
- (5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a suitable form which includes the following information:
- (a) Date and time of each inspection.
 - (b) Presence or absence of visible emissions.
 - (c) Condition of fabric filters, including the presence of any tears, holes, and abrasions.
 - (d) Presence of dust deposits on clean side of fabric filters.
 - (e) Brief description of corrective actions taken, including date and time.
 - (f) Daily hours of operation for each air-cleaning device.
- (6) Furnish upon request and make available at the affected facility during normal business hours, for inspection by the department, all records required under this section.
- (7) Retain a copy of all monitoring and inspection records for at least two years.
- (8) Submit quarterly a copy of the visible emission monitoring record to the department if visible emissions occurred during the report period. Quarterly reports must be postmarked by the thirtieth day following the end of the calendar quarter.
9. **Standard for insulating materials.** No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this subsection do not apply to spray-applied insulating materials regulated under subsection 7.

10. **Standard for waste disposal for asbestos mills.** Each owner or operator of any source covered under the provisions of subsection 3 shall:

- a. Deposit all asbestos-containing waste material at department-approved waste disposal sites operated in accordance with the provisions of subsection 15.
- b. Discharge no visible emissions to the outside air from the transfer of asbestos waste from control devices to the tailings conveyor, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with subdivision b of subsection 11 or subdivision c of this subsection.
- c. Discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of any asbestos-containing waste material, or use one of the disposal methods as follows:

(1) Use a wetting agent as follows:

- (a) Adequately mix all asbestos-containing waste material with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings, before depositing the material at a waste disposal site. Use the agent as recommended for the particular dust by the manufacturer of the agent.
- (b) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.
- (c) Wetting may be suspended when the ambient temperature at the waste disposal site is less than fifteen degrees Fahrenheit [-9.44 degrees Celsius] as determined by an appropriate measurement method with an accuracy of plus or minus two degrees Fahrenheit [1.11 degrees Celsius]. During periods when wetting operations

are suspended the temperature must be recorded at least at hourly intervals, and records must be retained for at least two years in a form suitable for inspection.

(2) Use an alternative emission control and treatment method that has received prior written approval by the department and administrator. To obtain approval for an alternative method, a written application must be submitted to the department and the administrator of the United States environmental protection agency demonstrating that the following criteria are met:

(a) The alternative method will control asbestos emissions equivalent to currently required methods.

(b) That the alternative method is suitable for the intended application.

(c) The alternative method will not violate other regulations.

(d) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

(3) When waste is transported by vehicle to a disposal site, all of the requirements of subdivision 11.d of this section must be complied with.

11. Standard for waste disposal for manufacturing, demolition, renovation, spraying and fabricating operations. Each owner or operator of any source covered under any of the provisions of subsection 5, 6, 7, or 8 shall comply with all the provisions of this subsection. Each owner or operator of any source covered by subsection 10 shall comply with subdivision d of this subsection.

a. Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods as follows:

- (1) Adequately wet asbestos-containing waste material as follows:
 - (a) Mix asbestos waste from control devices with water to form a slurry; adequately wet other asbestos-containing waste material;
 - (b) Discharge no visible emissions to the outside air from collection, mixing, and wetting operations, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air;
 - (c) After wetting, seal all asbestos-containing waste material in leaktight containers while wet. For materials that will not fit into containers without additional breaking, put materials into leaktight wrapping;
 - (d) Label the containers or wrapped materials specified above c as follows:

DANGER

CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

Alternatively, use warning labels currently specified by occupational safety and health standards of the department of labor, occupational safety and health administration (OSHA) under title 29, Code of Federal Regulations, 1910.1001 or title 29, Code of Federal Regulations, 1926.1101(k)(8); and

- (e) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.
- (2) Process asbestos-containing waste material into nonfriable forms as follows:

- (a) Form all asbestos-containing waste material into nonfriable pellets or other shapes.
 - (b) Discharge no visible emissions to the outside air from the collection and processing operations, including incineration, or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.
- (3) For facilities demolished where the regulated asbestos-containing material is not removed prior to demolition according to paragraph 4 of subdivision a and subparagraphs a, b, c, and d of paragraph 1 of subdivision c of subsection 6 adequately wet asbestos-containing waste material at all times during and after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leaktight containers or wrapping but may be transported by covered hauling and disposed of in bulk.
- (4) Use an alternative disposal method that has received prior approval by the department and administrator of the United States environmental protection agency.
- (5) As applied to demolition and renovation the requirements of subdivision a of this subsection do not apply to category I or category II nonfriable asbestos-containing material waste that is not or will not become crumbled, pulverized, or reduced to powder.
- b. Deposit all asbestos-containing waste material as soon as practical at:
- (1) Department-approved waste disposal sites operated in accordance with the provisions of subsection 15.
 - (2) A United States environmental protection agency-approved site that converts regulated asbestos-containing material and asbestos-containing waste material into nonasbestos

(asbestos free) material according to the provisions of subsection 17.

- (3) The requirements of this subdivision do not apply to category I nonfriable asbestos-containing material that is not or will not become regulated asbestos-containing material.

c. All facilities used for the temporary storage of asbestos-containing waste material must be controlled and the material must be stored in leaktight containers.

- (1) Post a warning sign at the entrances to the temporary storage facility with a label as follows:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

Alternatively, use warning labels currently specified by occupational safety and health standards of the department of labor, occupational safety and health administration (OSHA) under title 29, Code of Federal Regulations, 1910.1001 or title 29, Code of Federal Regulations, 1926.58.

- (2) Take necessary precautions to prevent or restrict access to the temporary storage facility.
 - (3) The temporary storage facility must be inspected at least once per week to ensure that good structural integrity of the storage facility is maintained and that the facility remains secure.
 - (4) The maximum length of time allowed for temporary storage of an asbestos-containing waste material may not exceed one hundred eighty days.
- d. Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the sign are visible. The markings must:

- (1) Be displayed in such a manner and location that a person can easily read the legend.
- (2) Conform to the requirements for twenty inch by fourteen-inch [50.8-centimeter by 35.56-centimeter] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this paragraph; and
- (3) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.
Authorized Personnel Only	14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper of the two lines.

- e. Prior to transportation of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing waste material off the facility site:
 - (1) The owner or operator and the transporter shall ensure that a waste shipment record has been appropriately completed and signed by the generator, and accompanies the waste to the disposal site. The waste shipment record must include the following information:
 - (a) Name, address, and telephone number of the facility owner or operator where the asbestos-containing waste materials were generated.

- (b) Location of the facility where asbestos-containing waste material was generated.
 - (c) The name and address of this department as being the responsible agency for administering the asbestos NESHAP program.
 - (d) Estimated quantity of asbestos-containing waste material in cubic yards.
 - (e) Name and physical site location of the waste disposal site where the asbestos-containing waste will be deposited.
 - (f) The name and telephone number of the disposal site operator.
 - (g) The date transported.
 - (h) The name, address, and telephone number of the transporters.
 - (I) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.
- (2) Provide a copy of the waste shipment record to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.
 - (3) For waste shipments where a copy of the waste shipment record signed by the owner or operator of the designated disposal site is not received by the waste generator within thirty-five days of the date the waste was accepted by the initial transporter, contact the transporter or the owner or operator of the designated disposal site to determine the status of the waste shipment.
 - (4) Report in writing to this department if a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site is not received by the waste

generator within forty-five days of the date the waste was accepted by the initial transporter. Include in the report the following information:

- (a) A copy of the waste shipment record for which a confirmation of delivery was not received; and
 - (b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the result of those efforts.
- (5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site for at least two years.
- (6) A copy of the completed waste shipment record must be submitted to the department by the owner or operator of the facility no later than ten days after the owner or operator of the facility receives the completed waste shipment record from the landfill operator.
- f. Furnish upon request, and make available for inspection by the department, all records required under this section.
- g. If an acceptable disposal site, as determined by subsection 15, is located on the same property as the facility where the asbestos-containing waste materials were generated, then the recordkeeping requirements of subdivision e of this subsection do not apply. The owner shall maintain records which include information on the quantity, location, and date of asbestos-containing waste disposal activities.

12. Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that received deposits of asbestos-containing waste material generated by sources covered under subsection 3, 5, 8, or 10, shall:

- a. Comply with one of the following:

- (1) Discharge no visible emissions to the outside air from an inactive waste disposal site subject to this subsection;
 - (2) Cover the asbestos-containing waste material with at least fifteen centimeters [6 inches] of compacted non-asbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material;
 - (3) In areas where vegetation would be difficult to maintain, cover the asbestos-containing waste material with at least sixty centimeters [2 feet] of compacted non-asbestos-containing material, and maintain it to prevent exposure of the asbestos-containing waste or cover with at least six inches [15.24 centimeters] of compacted non-asbestos-containing material and at least an additional three inches [7.62 centimeters] of a non-asbestos crushed rock cover in place of the vegetation; or
 - (4) For inactive waste disposal sites for asbestos tailings, apply a resinous-based or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent. Obtain prior approval of the department to use other equally effective dust suppression agents. For purposes of this paragraph, used, spent, or other waste oil is not considered a dust suppression agent.
- b. Unless a natural barrier adequately deters access by the general public, install and maintain warning signs and fencing as follows, or comply with paragraph 2 or 3 of subdivision a of this subsection.
- (1) Display warning signs at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material was deposited. The warning signs must:

- (a) Be posted in such a manner and location that a person can easily read the legend.
- (b) Conform to the requirements for fifty-one centimeters by thirty-six centimeters [20-inch by 14-inch] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4) and this subdivision.
- (c) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
DANGER	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
ASBESTOS DUST HAZARD	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
CANCER AND LUNG DISEASE HAZARD	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block.
Authorized Personnel Only	14 Point Gothic

Spacing between any two lines must be at least equal to the height of the upper two lines.

- (2) Fence the perimeter of the site in a manner adequate to deter access by the general public.
 - (3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.
- c. The owner or operator may use an alternative control method that has received prior approval of the department and administrator of the United States environmental protection agency rather than comply with the requirements of subdivision a or b of this subsection.

d. Notify the department, in writing, at least forty-five days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of a new start date must be provided to the department at least ten days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

- (1) Scheduled starting and completion dates.
- (2) Reason for disturbing the waste.
- (3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the department may require changes in the emission control procedures to be used.
- (4) Location of any temporary storage site and the final disposal site.

e. Within sixty days of a site becoming inactive, record in accordance with state law a notation on the deed to the facility property and on any instrument that would normally be examined during a title search. This notation will in perpetuity notify any potential purchaser of the property that:

- (1) The land has been used for the disposal of asbestos-containing waste material;
- (2) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in subdivision f of subsection 15 have been filed with the department; and
- (3) The site is subject to this section.

13. Air-cleaning.

- a. The owner or operator who elects to use air-cleaning, as permitted in subsections 3, 5, 6, 7, 8, 10, and 11 shall:
 - (1) Use fabric filter collection devices except as noted in subdivision b of this subsection, doing all of the following:
 - (a) Ensuring that the airflow permeability, as determined by A.S.T.M. method D737-75, does not exceed nine $\text{m}^3/\text{min}/\text{m}^2$ [30 $\text{ft}^3/\text{min}/\text{ft}^2$] for woven fabrics or eleven $\text{m}^3/\text{min}/\text{m}^2$ [35 $\text{ft}^3/\text{min}/\text{ft}^2$] for felted fabrics, except that twelve $\text{m}^3/\text{min}/\text{m}^2$ [40 $\text{ft}^3/\text{min}/\text{ft}^2$] for woven and fourteen $\text{m}^3/\text{min}/\text{m}^2$ [45 $\text{ft}^3/\text{min}/\text{ft}^2$] for felted fabrics is allowed for filtering air from asbestos ore dryers.
 - (b) Ensuring that felted fabric weighs at least four hundred seventy-five grams per square meter [14 ounces per square yard] and is at least one and six-tenths millimeters [1/16 inch] thick throughout.
 - (c) Avoiding the use of synthetic fabrics that contain fill yarn other than that which is spun.
 - (2) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this subsection. Bypass devices may be used only during upset or emergency conditions and then only for so long as it takes to shut down the operation generating the asbestos material.
 - (3) For fabric filters installed after January 10, 1989, provide for easy inspection for faulty bags.
- b. There are the following exceptions to paragraph 1 of subdivision a:
 - (1) If the use of fabric creates a fire or explosion hazard or the department determines that a fabric filter is not feasible, the department may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals [40 inches water gauge pressure].

- (2) Use a high-efficiency particulate air filter that is certified to be at least ninety-nine and ninety-seven hundredths percent efficient for particles with a diameter size of three-tenths microns and greater.
- (3) The department and administrator of the United States environmental protection agency may authorize the use of filtering equipment other than that described in subdivisions a and b of this subsection if the owner or operator demonstrates to the administrator and the department's satisfaction that it is equivalent to the described equipment in filtering asbestos material.

14. Reporting.

- a. Any existing source to which this section applies (with the exception of sources subject to subsections 4, 6, 7 and 9) which has not previously supplied a notice to this department or the administrator, shall provide such notice within ninety days of the effective date of this regulation. Any new source to which this section applies shall provide notice to this department within ninety days of the effective startup date of the source. Changes to the information provided in a notice must be submitted to this department within thirty days of the change taking place. The notice shall provide the following information to the department:
 - (1) A description of the emission control equipment used for each process; and
 - (2) If a fabric filter device is used to control emissions;
 - (a) The airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$ if the fabric filter device uses a woven fabric and; if the fabric is synthetic, whether the fill yarn is spun or not spun.
 - (b) If the fabric filter device uses a felted fabric, the density in g/m^2 , the minimum thickness in millimeters, and the airflow permeability in $\text{m}^3/\text{min}/\text{m}^2$.

(3) If a high-efficiency particulate air filter is used to control emissions, the certified efficiency.

(4) For sources subject to subsections 10 and 11:

(a) A brief description of each process that generates asbestos-containing waste material;

(b) The average volume of asbestos-containing waste material disposed of in cubic yards per day;

(c) The emission control methods used in all stages of waste disposal; and

(d) The type of disposal site used for ultimate disposal, the name of the site operator, and the name and location of the disposal site.

(5) For sources subject to subsections 12 and 15:

(a) A brief description of the site; and

(b) The method or methods used to comply with the standard, or alternative procedures to be used.

b. The information required by subdivision a of this subsection must accompany the information required by 40 Code of Federal Regulations 61.10. Active waste disposal sites subject to subsection 15 shall also comply with this provision. Roadways, demolition and renovations, spraying, and insulating materials are exempted from the requirements of 40 Code of Federal Regulations 61.10(a).

15. **Standard for active waste disposal sites.** To be an acceptable site for disposal of asbestos-containing waste material under subsections 10, 11, and 17, an active waste disposal site must meet the requirements of this subsection.

a. Either there shall be no visible emissions to the outside air from any active waste disposal site where asbestos-containing waste material has been deposited, or the requirements of subdivisions c and d of this subsection must be met.

b. Unless a natural barrier adequately deters access by the general public, either warning signs and fencing must be installed and maintained as follows, or the requirements of paragraph 1 of subdivision c of this subsection must be met.

(1) Warning signs must be displayed at all entrances and at intervals of three hundred twenty-eight feet [100 meters] or less along the property line of the site or along the perimeter of the sections of the site where asbestos-containing waste material is deposited. The warning signs must:

(a) Be posted in such a manner and location that a person may easily read the legend.

(b) Conform to the requirements of fifty-one centimeters by thirty-six centimeters [20 inches by 14 inches] upright format signs specified in title 29, Code of Federal Regulations, 1910.145(d)(4), and this subsection.

(c) Display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend	Notation
Asbestos Waste Disposal Site	2.5 cm [1 in.] Sans Serif, Gothic, or Block.
Avoid Creating Dust Breathing Asbestos Dust May Cause Lung Disease and Cancer	1.9 cm [3/4 in.] Sans Serif, Gothic, or Block. 14 Point Gothic

Spacing between lines must be at least equal to the height of the upper two lines.

(2) The perimeter of the disposal site must be fenced in order to adequately deter access by the general public.

- (3) Upon request and supply of appropriate information, the department will determine whether a fence or a natural barrier adequately deters access by the general public.
- c. Rather than meet the no visible emission requirements of subdivision a of this subsection, an active waste disposal site would be an acceptable site if at the end of each operating day, or at least once every twenty-four-hour period while the site is in continuous operation, the asbestos-containing waste material which was deposited at the site during the operating day or previous twenty-four-hour period is covered with either:
- (1) At least fifteen centimeters [6 inches] of compacted non-asbestos-containing material; or
 - (2) A resinous-based or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. This agent must be used in the manner and frequency recommended for the particular dust by the manufacturer of the dust suppression agent. Other equally effective dust suppression agents may be used upon prior approval by the department. For purposes of this paragraph, used, spent, or other waste oil is not considered a dust suppression agent.
- d. Rather than meet the no visible emission requirement of subdivision a of this subsection, use an alternative emission control method that has received prior approval by the department and the administrator of the United States environmental protection agency.
- e. For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:
- (1) Maintain waste shipment records which include the following information:
 - (a) The name, address, and telephone number of the waste generator.
 - (b) The name, address and telephone number of the transporters.

- (c) The quantity of the asbestos-containing material in cubic yards.
 - (d) The presence of improperly enclosed or uncovered wastes or any asbestos-containing waste material not sealed in leaktight containers. Report in writing to this department by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.
 - (e) The date of the receipt.
- (2) As soon as possible and no longer than thirty days after receipt of the waste send a copy of the signed waste shipment record to the waste generator.
 - (3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within fifteen days after receiving the waste, immediately report in writing to this department. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.
 - (4) Retain a copy of all records and reports required by this subdivision for at least two years.
- f. Maintain until closure, records of the location, depth and area and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.
 - g. Upon closure, comply with all the provisions of subsection 12 of this section.
 - h. Submit to this department, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

- I. Furnish upon request and make available during normal business for inspection by this department, all records required under this section.
- j. Comply with subdivision d of subsection 12 if it becomes necessary to excavate or otherwise disturb asbestos-containing waste material that has been previously covered.

16. **Asbestos abatement licensing and certification.** No public employees or employees of asbestos contractors shall engage in any asbestos abatement activity or provide asbestos abatement project monitoring unless they are certified with the department as provided in this subsection. No person shall engage in any asbestos abatement activity in a public or commercial building unless the person is certified with the department as provided in this subsection. Certification will be for a period of one year from the completion date of the initial training course or the last refresher course in the appropriate discipline. All asbestos contractors and firms who provide asbestos abatement or asbestos abatement project monitoring services, must be licensed with this department, as provided in this subsection, prior to beginning asbestos abatement or asbestos abatement project monitoring activities. At least one person having completed the requirements for supervisor certification of subdivision b of this subsection is required to be at the worksite at all times while work is in progress, if the work involves repair, removal, encapsulation, enclosure or handling of regulated asbestos-containing material if the work is being conducted by an asbestos contractor or public employees. At least one on-site individual having completed the supervisor training requirement of subdivision b of this subsection is required to be present if the activity is regulated by subsection 6 of this section and the work is being conducted by employees of the owner.

- a. Asbestos workers. All asbestos workers employed by asbestos abatement contractors and all public employees and all other asbestos workers in public and commercial buildings engaged in the repair, removal, enclosure, encapsulation or handling of regulated asbestos-containing material, must obtain certification as outlined in all paragraphs of this subdivision except as provided in subdivision h.

(1) Application. Any applicant desiring certification as an asbestos worker shall make an application to the department on forms

supplied by the department. Each application shall be accompanied by a nonrefundable fee of fifty dollars except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.

- (2) Initial training. Any applicant desiring certification as an asbestos worker shall complete the initial training requirements for asbestos worker accreditation under title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994, by attending and successfully completing a training course designed for asbestos workers. The training course must have received approval from the environmental protection agency or the department.
- (3) Examination. Any applicant for certification shall pass a written examination administered by the department. The department may accept proof of successful completion of an examination administered by an environmental protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations must be given before requiring attendance of another initial training course. Information concerning the testing arrangements can be obtained from the department.
- (4) Refresher training. Any asbestos worker who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The

course content include a review of the changes in federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, the asbestos worker shall complete a refresher course within one year of the last refresher course.

- (5) Certification renewal. Any asbestos worker who desires to renew their certification must have attended a refresher training course within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such course and a recertification fee of fifty dollars. Certification is current for a period of twelve months from the date of the training course. If an asbestos worker does not satisfy the refresher training requirements of this subdivision within two years of the date of the initial training course or of the last refresher training course, then the individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification.
- (6) The certification card issued by the department must be available at the worksite for each asbestos worker.

b. Other asbestos disciplines. Any individual, except asbestos workers, acting as or acting on behalf of an asbestos contractor or as a public employee who performs an asbestos abatement service or any individual who performs asbestos abatement project monitoring on behalf of a contracting firm or as a public employee or any other individual who performs asbestos abatement in a public or commercial building must obtain certification as outlined in all paragraphs of this subdivision. This certification requirement applies to asbestos abatement supervisors, asbestos inspectors, asbestos management planners, asbestos abatement project designers, and asbestos abatement project monitors except as provided in subdivision h.

- (1) Application. Any person desiring certification in the disciplines of asbestos inspector, asbestos management planner,

asbestos abatement project designer, asbestos abatement project monitor, and asbestos abatement supervisor shall make an application to the department on forms supplied by the department. Each application shall be accompanied by a nonrefundable fee of fifty dollars for each discipline within which the applicant is seeking certification except as provided in subdivision g. This fee includes the processing of the initial examination specified in paragraph 3 of this subdivision.

(2) The initial training requirements are as follows:

(a) Any applicant desiring certification as an asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement supervisor or any individual required to meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete the initial training requirements set forth in title 40, Code of Federal Regulations, part 763, appendix C to subpart E - environmental protection agency model contractor accreditation plan as amended February 3, 1994 by attending and successfully completing a training course in the appropriate discipline. The training course must have received approval in the respective discipline from the environmental protection agency or the department.

(b) Asbestos abatement project monitors must have a valid state certification as asbestos abatement supervisor or asbestos abatement project designer and shall have completed a NIOSH 582 or equivalent air sampling course of not less than four days in length.

(3) Examination. Any applicant for certification in a specific discipline except asbestos abatement project monitor shall pass a written examination administered by the department for that discipline. The department may accept proof of successful completion of an examination administered by an environmental

protection agency or department approved training course provider. The examination and the results of the examination must be available to the department upon request. Any applicant who fails to obtain a minimum seventy percent passing score on the examination shall be eligible to take a subsequent examination no earlier than one week following the previous examination. A twenty-five dollar fee is required for each examination. No more than three examinations shall be given before requiring attendance of another initial training course.

- (4) Refresher training. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, or asbestos abatement project designer who has received initial training and has established full certification with the department, and who wishes to maintain continuous certification, or any individual who must meet the training requirements of paragraph 8 of subdivision c of subsection 6 shall complete a refresher training course as required by the model contractor accreditation plan as amended February 3, 1994, within one year of completing the initial training course. The course content must include a review of the changes in the federal and state regulations, a discussion of the developments in state-of-the-art procedures and equipment as well as an overview of key aspects of the initial training course. Thereafter, these persons shall complete a refresher course designed for the respective disciplines within one year of the last refresher course.
- (5) Certification renewal. Any asbestos abatement supervisor, asbestos inspector, asbestos management planner, asbestos abatement project designer, or asbestos abatement project monitor who desires to renew the persons certification, must have attended a refresher training course in the appropriate discipline within twelve months prior to submittal of the renewal application. The renewal application shall include proof of attendance at such a course and a recertification fee of fifty dollars per discipline. Certification is current for a period of twelve months from the

date of the training course. If an individual does not satisfy the refresher training requirements of this subdivision in their respective discipline within two years of the date of the initial training or of the last refresher training, then that individual shall complete the initial training requirements provided in paragraph 2 of this subdivision to reestablish full certification. Refresher training of the air sampling course for project monitors is not required.

(6) The certification card issued by the department must be available at the worksite.

c. Asbestos contractor license. Each contractor who performs asbestos abatement services or performs asbestos abatement project monitoring services in the state shall obtain an asbestos contractor license except as provided in subdivision h.

(1) Submit an application to the department on forms supplied by the department. An application shall be accompanied by a nonrefundable fee of one hundred fifty dollars.

(2) The license fee will cover the period from January first through December thirty-first of each year unless the license is suspended, revoked, or denied as specified in subdivision f. The fee shall be one hundred fifty dollars regardless of the application date. Following the initial submittal, the renewal fee shall be due and payable by January thirtieth of the following year.

(3) A contractor seeking an asbestos contractor license must have completed the appropriate training and certification requirements in subdivision b of this subsection. The contractor may designate an employee who has completed this requirement to serve as the contractor's agent for the purposes of obtaining an asbestos contractor license.

(4) Asbestos contractors who provide multiple services are not required to pay additional license fees.

- (5) All certifiable services offered by an asbestos contractor must be performed by persons certified in accordance with subdivisions a and b of this subsection.
 - (6) A copy of the asbestos contractor license shall be made available at the worksite.
 - (7) This license does not exempt, supersede, or replace any other state or local licensing or permitting requirements.
- d. Approved initial and refresher training courses. The department will maintain and provide a listing of approved initial and refresher training courses. Applicants seeking approval of courses, other than those present on the department list, must submit information on the course content to the department. The course content must satisfy the minimum requirements of the model contractor accreditation plan as amended February 3, 1994. The department will advise the applicant whether the course is approved within thirty days of receipt of the necessary information. Training course providers will be required to meet all applicable requirements contained in title 40, Code of Federal Regulations, part 763, appendix C to subpart E as amended February 3, 1994.
- e. Reciprocity. Each applicant for asbestos worker or asbestos contractor certification who is licensed or certified for asbestos abatement in another state may petition the department for certification without written examination. The department shall evaluate the requirements in such other states and shall issue the certification without examination if the department determines that the requirements in such other states are at least as stringent as the requirements for certification in North Dakota. Each application for certification pursuant to this subdivision shall submit an application accompanied by a nonrefundable fee of fifty dollars.
- f. Suspension, revocation, or denial. An asbestos certification or license may be suspended, revoked, or denied if:
- (1) Violations of the requirements of this section are noted;

- (2) Another state has revoked, suspended, or denied a license or certification for violations of applicable standards;
 - (3) An incomplete application is filed; or
 - (4) The required fee is not submitted.
- g. Public employees will not be required to pay the fifty dollar certification or recertification fees.
- h. Any individual or asbestos contractor engaged in repair, removal, enclosure, or encapsulation activities involving less than or equal to three square feet [0.28 square meters] or three linear feet [0.91 meters] of asbestos-containing materials, are exempt from the certification and licensing requirements of this subsection.
- i. Upon written request, the department, at its discretion, may review training course material and conduct an audit of a training course to determine if the course and examination meet the training requirements of title 40, Code of Federal Regulations, part 763, appendix C to subpart E - U.S. environmental protection agency model contractor accreditation plan as amended February 3, 1994. Under the authority granted to this department by the Environmental protection agency courses that this department determine to meet the model contractor accreditation plan shall be listed in the federal register list of approved courses.
- (1) Training courses seeking department approval shall submit the material necessary for the department to conduct the review, including the submittal requirements listed in title 40, Code of Federal Regulations, part 763, appendix C, subpart E, model contractor accreditation plan as amended February 3, 1994.
 - (2) The department must be provided access, without cost, to any asbestos course conducted in this state to determine if the course meets the requirement of the environmental protection agency model contractor accreditation plan as amended February 3, 1994. Following such an audit, the department may rescind approval or refuse to accept as

adequate any course determined not to meet the training requirements of the environmental protection agency model contractor accreditation plan.

- (3) Any training provider requesting a review of the provider's course for approval by this department shall submit a filing fee of one hundred fifty dollars plus an application processing fee. The application processing fee will be based on the actual processing costs, including time spent by this department to conduct the course review and course audit, and any travel and lodging expenses the department incurs conducting these items. Following the course review and audit, and after making a determination on the accreditation status of the course, a statement will be sent to the applicant listing the remaining application processing costs. The statement must be sent within fifteen months of the submittal of the initial filing fee.

17. **Standard for operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material.** Each owner or operator of an operation that converts regulated asbestos-containing material and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

- a. Obtain the prior written approval of this department and the administrator of the United States environmental protection agency to construct the facility. To obtain approval, the owner or operator shall provide the department and the administrator of the United States environmental protection agency with the following information:

- (1) Application to construct pursuant to chapter 33-15-14.

- (2) In addition to the information requirements of chapter 33-15-14, provide a:

- (a) Description of the waste feed handling and temporary storage.

- (b) Description of process operating conditions.

- (c) Description of the handling and temporary storage of the end products.
 - (d) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.
- (3) Performance test protocol, including provisions for obtaining information required under subdivision b of this subsection.
 - (4) The department may require that a demonstration of the process be performed prior to approval of the application to construct.
- b. Conduct a startup performance test. Test results must include:
- (1) A detailed description of the types and quantities of nonasbestos material, regulated asbestos-containing material, and asbestos-containing waste material processed (e.g., asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc.). Test feed is to include the full range of materials that will be encountered in actual operation of the process.
 - (2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.
 - (3) Results of analyses using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as eight-hour composite samples (one 200-hundred gram [seven-ounce] sample per hour), beginning with the initial introduction of regulated asbestos-containing material or asbestos-containing waste material and continuing until the end of the performance test.
 - (4) A description of operating parameters, such as temperature and residence times, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process

will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

c. During the initial ninety days of operation:

(1) Continuously monitor and log the operating parameters identified during startup performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Monitor input materials to ensure that they are consistent with the test feed materials described during startup performance tests in paragraph 1 of this subdivision.

(3) Collect and analyze samples taken as ten-day composite samples (one 200-hundred gram [seven-ounce] sample collected every eight hours of operation) of all output materials for the presence of asbestos. Composite samples may be for fewer than ten days. Transmission electron microscopy must be used to analyze the output materials for the presence of asbestos. During the initial ninety day period, all output materials must be stored onsite until analysis shows the material to be asbestos-free or be disposed of as asbestos-containing waste material according to subsection 11.

d. After the initial ninety days of operation:

(1) Continuously monitor and record the operating parameters identified during startup performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output material shall be:

(a) Disposed of as asbestos-containing waste material according to subsection 11;

(b) Recycled as waste feed during process operations within the established range of operating conditions; or

- (c) Stored temporarily onsite in a leaktight container until analyzed for asbestos content. Any product material that is not asbestos-free shall either be disposed of as asbestos-containing waste material, or recycled as waste feed to the process.
- (2) Collect and analyze monthly composite samples (one 200-hundred gram [seven-ounce] sample collected every eight hours of operation) of the output material. Transmission electron microscopy must be used to analyze the output material for the presence of asbestos.
- e. Discharge no visible emissions to the outside air from any part of the operation or use the methods specified by subsection 13 to clean emissions containing particulate asbestos material before they escape to or are vented to the outside air.
 - f. Maintain records onsite and include the following information:
 - (1) Results of startup performance testing and all subsequent performance testing, including operating parameters, feed characteristics, and analyses of output materials.
 - (2) Results of the composite analysis required during the initial ninety days of operation under subdivision c of this subsection.
 - (3) Results of the monthly composite analysis required under subdivision d of this subsection.
 - (4) Results of continuous monitoring and logs of process operating parameters required under subdivisions c and d of this subsection.
 - (5) Information on waste shipments received as required in subdivision e of subsection 15.
 - (6) For output materials when no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which output materials were sold or deposited and the date of sale or disposal.

- (7) Retain records required by this subdivision for at least two years.
- g. Submit the following reports to the department:
- (1) A report for each analysis of product composite samples performed during the initial ninety days of operation.
 - (2) A quarterly report, including the following information concerning activities during each consecutive three-month period:
 - (a) Results of analyses of monthly product composite samples.
 - (b) A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation.
 - (c) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily onsite until analyzed for asbestos content.
 - (d) The information on waste disposal activities as required in subdivision f of subsection 15.
- h. Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this section. Output material in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the startup performance testing, unless shown by transmission electron microscopy analysis to be asbestos-free shall be considered to be asbestos-containing waste and must be handled and disposed of in accordance with subsections 11 and 15 or reprocessed while all of the established operating parameters are being met.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; January 1, 1996; September 1, 2002; February 1, 2005.

General Authority: NDCC 23-25-03, 23-25-03.1

Law Implemented: NDCC 23-25-03, 23-25-03.1

33-15-13-03. Emission standard for beryllium. Repealed effective June 1, 1992.

33-15-13-04. Emission standard for beryllium rocket motor firing. Repealed effective June 1, 1992.

33-15-13-05. Emission standard for mercury. Repealed effective June 1, 1992.

33-15-13-06. Emission standard for vinyl chloride. Repealed effective June 1, 1992.

33-15-13-07. Emission standard for equipment leaks (fugitive emissions sources) of benzene. Repealed effective June 1, 1992.

33-15-13-08. Emission standard for equipment leaks (fugitive emission sources) of benzene. Repealed effective June 1, 1992.

CHAPTER 33-15-14
DESIGNATED AIR CONTAMINANT SOURCES,
PERMIT TO CONSTRUCT, MINOR SOURCE PERMIT TO OPERATE,
TITLE V PERMIT TO OPERATE

Section

33-15-14-01	Designated Air Contaminant Sources
33-15-14-01.1	Definitions
33-15-14-02	Permit to Construct
33-15-14-03	Minor Source Permit to Operate
33-15-14-04	Permit Fees [Repealed]
33-15-14-05	Common Provisions Applicable to Both Permit to Construct and Permit to Operate [Repealed]
33-15-14-06	Title V Permit to Operate
33-15-14-07	Source Exclusions from Title V Permit to Operate Requirements

33-15-14-01. Designated air contaminant sources. Pursuant to subsection 1 of North Dakota Century Code section 23-25-04, stationary sources within the following source categories are designated as air contaminant sources capable of causing or contributing to air pollution, either directly or indirectly.

1. The following chemical process facilities:
 - a. Adipic acid.
 - b. Ammonia.
 - c. Ammonium nitrate.
 - d. Carbon black.
 - e. Charcoal.
 - f. Chlorine.
 - g. Chlor-alkali manufacturing.
 - h. Detergent and soap.
 - i. Explosives (trinitrotoluene and nitrocellulose).
 - j. Hydrochloric acid.

- k. Hydrofluoric acid.
 - l. Nitric acid.
 - m. Paint and varnish manufacturing.
 - n. Phosphoric acid.
 - o. Phthalic anhydride.
 - p. Plastics manufacturing.
 - q. Printing ink manufacturing.
 - r. Sodium carbonate.
 - s. Sulfur production and recovery.
 - t. Sulfuric acid.
 - u. Synthetic fibers.
 - v. Synthetic rubber.
 - w. Terephthalic acid.
 - x. Alcohol.
 - y. Cresylic acids.
 - z. Phenol
 - aa. Polymer manufacturing and coating operations.
2. The following food and agricultural facilities:
- a. Agricultural drying and dehydrating operations.
 - b. Ammonium nitrate.
 - c. Cheese whey drying and processing.
 - d. Coffee roasting.
 - e. Cotton ginning.
 - f. Feed, grain, and seed handling and processing.

- g. Fermentation processes.
 - h. Fertilizers.
 - i. Fishmeal processing.
 - j. Meat smokehouses.
 - k. Orchard heaters.
 - l. Potato processing.
 - m. Rendering plants.
 - n. Starch manufacturing.
 - o. Sugarbeet processing.
3. The following metallurgical facilities:
- a. Primary metals facilities:
 - (1) Aluminum ore reduction.
 - (2) Copper smelters.
 - (3) Ferroalloy production.
 - (4) Iron and steel mills.
 - (5) Lead smelters.
 - (6) Metallurgical coke manufacturing.
 - (7) Zinc.
 - b. Secondary metals facilities:
 - (1) Aluminum operations.
 - (2) Brass and bronze smelting.
 - (3) Ferroalloys.
 - (4) Ferrous foundries.
 - (5) Gray iron foundries.

- (6) Lead smelting.
 - (7) Magnesium smelting.
 - (8) Nonferrous foundries.
 - (9) Steel foundries.
 - (10) Zinc processes.
 - c. Electrolytic plating operations.
4. The following mineral products facilities:
- a. Asphalt roofing.
 - b. Asphaltic concrete plants.
 - c. Bricks and related clay refractories.
 - d. Calcium carbide.
 - e. Ceramic and clay processes.
 - f. Clay and fly ash sintering.
 - g. Coal cleaning.
 - h. Coal drying.
 - i. Coal mining.
 - j. Coal handling and processing.
 - k. Concrete batching.
 - l. Fiberglass manufacturing.
 - m. Frit manufacturing.
 - n. Glass manufacturing.
 - o. Gypsum manufacturing.
 - p. Leonardite mining, drying, and processing.
 - q. Lime manufacturing.

- r. Mineral wool manufacturing.
 - s. Paperboard manufacturing.
 - t. Perlite manufacturing.
 - u. Phosphate rock preparation.
 - v. Portland cement manufacturing, bulk handling, and storage.
 - w. Rock, stone, gravel, and sand quarrying and processing.
 - x. Uranium mining, milling, and enrichment.
 - y. Calciners and dryers.
5. The following energy and fuel facilities:
- a. Coal gasification.
 - b. Coal liquefaction
 - c. Crude oil and natural gas production.
 - d. Fossil fuel steam electric plants.
 - e. Fuel conversion plants.
 - f. Natural gas processing.
 - g. Petroleum refining and petrochemical operations.
 - h. Petroleum storage (storage tanks and bulk terminals).
6. The following wood processing facilities:
- a. Plywood veneer and layout operations.
 - b. Pulpboard manufacturing.
 - c. Wood pulping.
 - d. Sawmills.
 - e. Wood products manufacturing.

7. The following waste management units or facilities:
 - a. Afterburners.
 - b. Automobile body incinerators.
 - c. Conical burners.
 - d. Flares.
 - e. Gaseous and liquid organic compounds incinerators.
 - f. Industrial waste incinerators.
 - g. Open burning.
 - h. Open pit incinerators.
 - i. Infectious waste incinerators.
 - j. Refuse incinerators.
 - k. Salvage incinerators.
 - l. Sewage sludge incinerators.
 - m. Wood waste incinerators.
 - n. Municipal waste combustors.

8. The following miscellaneous facilities:
 - a. Dry cleaning and laundry operations.
 - b. Fuel burning equipment.
 - c. Internal combustion engines.
 - d. Surface coating operations.
 - e. Wastewater treatment plants.
 - f. Water cooling towers and water cooling ponds.
 - g. Stationary gas turbines.
 - h. Lead acid battery manufacturing.

- i. Hydrocarbon contaminated soil remediation projects.
9. Any category of sources to which a federal standard of performance applies (40 CFR 60).
10. Any source which emits a contaminant subject to a national emission standard for hazardous air pollutants (40 CFR 61).
11. Any source which is subject to review under federal prevention of significant deterioration of air quality regulations (40 CFR 51.166).
12. Any source which is determined by the department to have an emission which affects state ambient air quality standards or the other provisions of chapter 33-15-02.
13. Any source subject to title V permitting requirements in section 33-15-14-06.
14. Any major source to which a national emission standard for hazardous air pollutants for source categories (40 CFR 63) would apply.
15. Other sources subject to a standard or requirement under the Federal Clean Air Act as amended.

History: Amended effective October 1, 1987; March 1, 1994; August 1, 1995.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1

Law Implemented: NDCC 23-25-04, 23-25-04.1

33-15-14-01.1 Definitions. For the purposes of this chapter:

1. "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
2. "Construction, installation, or establishment" means:
 - a. For sources subject to a standard or requirement under chapters 33-15-13, 33-15-15 (excluding increment consumption by nonmajor sources), and 33-

15-22, it shall have the meaning given for construction in each of the respective chapters.

- b. For all other sources it means the placement or erection, including fabrication, demolition or modification, of an air contaminant emissions unit and any equipment, process, or structure that will be used to reduce, physically or chemically change, or transmit to the atmosphere any air contaminant. This does not include the building that houses the source, site work, foundations, or other equipment which does not affect the amount, ambient concentration or type of air contaminants that are emitted. With respect to a physical change or a change in the method of operation it means those on-site activities which will affect an existing emissions unit or establishment of a new unit that emits to the atmosphere.
3. "Emissions unit" has the meaning given to it in section 33-15-14-06.
4. "Minor source" means any designated air contaminant source under section 33-15-14-01 which is not required to obtain a title V permit to operate under section 33-15-14-06.
5. "Potential to emit" has the meaning given to it in section 33-15-14-06.
6. "Stationary source" has the meaning given to it in section 33-15-14-06.

History: Effective March 1, 1994; January 1, 1996.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-14-02. Permit to construct.

1. **Permit to construct required.** No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter. This requirement shall also apply to any source for which a

federal standard of performance has been promulgated prior to such filing of an application for a permit to construct. A list of sources for which a federal standard has been promulgated, and the standards which apply to such sources, must be available at the department's offices.

The initiation of activities that are exempt from the definition of construction, installation, or establishment in section 33-15-14-01.1, prior to obtaining a permit to construct, are at the owner or operator's own risk. These activities shall have no impact on the department's decision to issue a permit to construct. The initiation or completion of such activities shall convey no rights to a permit to construct under this section.

2. Application for permit to construct.

- a. Application for a permit to construct a new installation or source must be made by the owner or operator thereof on forms furnished by the department.
- b. A separate application is required for each new installation or source subject to this chapter.
- c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance with this article and will notify the department, in writing, of the startup of operation of such source.

3. Alterations to source.

- a. The addition to or enlargement of or replacement of or alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.
- b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an amount

greater than that specified in subdivision a of subsection 5 of section 33-15-02 of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted must be considered to be construction, installation, or establishment of a new source, except that:

- (1) Routine maintenance, repair, and replacement may not be considered a physical change.
 - (2) The following may not be considered a change in the method of operation:
 - (a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source and it is not limited by a permit condition.
 - (b) An increase in the hours of operation if it is not limited by a permit condition.
 - (c) Changes from one operating scenario to another provided the alternative operating scenarios are identified and approved in a permit to operate.
 - (d) Trading of emissions within a facility provided:
 - [1] These trades have been identified and approved in a permit to operate; and
 - [2] The total facility emissions do not exceed the facility emissions cap established in the permit to operate.
 - (e) Trading and utilizing acid rain allowances provided compliance is maintained with all other applicable requirements.
- c. Any owner or operator of a source who requests an increase in the allowable sulfur dioxide emission

rate for the source pursuant to 33-15-02-07.3 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 33-15-14-02.6.

4. **Submission of plans - Deficiencies in application.** As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.
 - a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of environmental engineering air quality). These documents are incorporated by reference.
 - b. When an air quality impact model specified in the documents incorporated by reference in subdivision

a is inappropriate, the model may be modified or another model substituted provided:

- (1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.
- (2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina ~~27711~~ 27709).
- (3) Written approval from the department must be obtained for any modification or substitution.
- (4) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.

5. **Review of application - Standard for granting permits to construct.** The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within ninety days of the receipt of the completed application, make the following preliminary determinations:

- a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will cause or contribute to a violation of any applicable ambient air quality standard. A new stationary source will be considered to cause or contribute to a violation of an ambient air quality standard when such source would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable ambient standard:

Contaminant

Averaging Time (hours)

	Annual ($\mu\text{g}/\text{m}^3$)	24 ($\mu\text{g}/\text{m}^3$)	8 ($\mu\text{g}/\text{m}^3$)	3 ($\mu\text{g}/\text{m}^3$)	1 ($\mu\text{g}/\text{m}^3$)
SO ₂	1.0	5		25	25
PM ₁₀	1.0	5			
NO ₂	1.0				25
CO			500		2000

- b. Whether the proposed project will provide all necessary and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.

6. Public participation - Final action on application.

- a. The following source categories are subject to the public participation procedures under this subsection:

- (1) Those affected facilities designated under chapter 33-15-13.
- (2) New sources that will be required to obtain a permit to operate under section 33-15-14-06.
- (3) Modifications to an existing facility which will increase the potential to emit from the facility by the following amounts:
 - (a) One hundred tons [90.72 metric tons] per year or more of particulate matter, sulfur dioxide, nitrogen oxides, hydrogen sulfide, carbon monoxide, or volatile organic compounds; or
 - (b) Ten tons [9.07 metric tons] per year or more of any contaminant listed under section 112(b) of the Federal Clean Air Act; or
 - (c) Twenty-five tons [22.68 metric tons] per year or more of any combination of

contaminants listed under section 112(b) of the Federal Clean Air Act.

- (4) Sources which the department has determined to have a major impact on air quality.
- (5) Those for which a request for a public comment period has been received from the public.
- (6) Sources for which a significant degree of public interest exists regarding air quality issues.
- (7) Those sources which request a federally enforceable permit which limits their potential to emit.

b. With respect to the permit to construct application, the department shall:

- (1) Within ninety days of receipt of a complete application, make a preliminary determination concerning issuance of a permit to construct.
- (2) Within ninety days of the receipt of the complete application, make available in at least one location in the county or counties in which the proposed project is to be located, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.
- (3) Publish notice to the public by prominent advertisement, within ninety days of the receipt of the complete application, in the region affected, of the opportunity for written comment on the preliminary determinations. The public notice must include the proposed location of the source.
- (4) Within ninety days of the receipt of the complete application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: the chief executive of the city and county; any comprehensive regional land use planning

agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

- (5) Within ninety days of receipt of a complete application, provide a copy of the proposed permit and all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.
- (6) Allow thirty days for public comment.
- (7) Consider all public comments properly received, in making the final decision on the application.
- (8) Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.
- (9) Take final action on the application within thirty days of the applicant's response to the public comments.
- (10) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.

c. For those sources subject to the requirements of chapter 33-15-15, the public participation procedures under ~~subsection 5~~ of section 33-15-15-01.2 shall be followed.

7. **Denial of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of any one of subdivision a or b of subsection 5 in the negative, it shall deny the permit and notify the applicant, in writing, of the denial to issue a permit to construct.

If a permit to construct is denied, the construction, installation, or establishment of the new stationary source shall be unlawful. No permit to construct or modify may be granted if such construction, or modification, or installation, will result in a violation of this article.

8. **Issuance of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of subdivision a or b of subsection 5 in the affirmative, the department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.
9. **Permit to construct - Conditions.** The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:
 - a. Sampling, testing, and monitoring of the facilities or the ambient air or both.
 - b. Trial operation and performance testing.
 - c. Prevention and abatement of nuisance conditions caused by operation of the facility.
 - d. Recordkeeping and reporting.
 - e. Compliance with applicable rules and regulations in accordance with a compliance schedule.
 - f. Limitation on hours of operation, production rate, processing rate or fuel usage when necessary to assure compliance with this article.

The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. **Scope.**
 - a. The issuance of a permit to construct for any source does not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting the source.

b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

11. **Transfer of permit to construct.** To ensure the responsible owners or operators, or both, are identified, the holder of a permit to construct may not transfer such permit without prior approval of the department.

12. **[Reserved]**

13. **Exemptions.** A permit to construct is not required for the following stationary sources provided there is no federal requirement for a permit or approval for construction or operation and there is no applicable new source performance standard, or national emission standard for hazardous air pollutants.

a. Maintenance, structural changes, or minor repair of process equipment, fuelburning equipment, control equipment, or incinerators which do not change capacity of such process equipment, fuelburning equipment, control equipment, or incinerators and which do not involve any change in the quality, nature, or quantity of emissions therefrom.

b. Fossil fuelburning equipment, other than smokehouse generators, which meet all of the following criteria:

- (1) The heat input per unit does not exceed ten million British thermal units per hour.
 - (2) The total aggregate heat input from all equipment does not exceed ten million British thermal units per hour.
 - (3) The actual emissions, as defined in chapter 33-15-15, from all equipment do not exceed twenty-five tons [22.67 metric tons] per year of any air contaminant and the potential to emit any air contaminant for which an ambient air quality standard has been promulgated in chapter 33-15-02 is less than one hundred tons [90.68 metric tons] per year.
- c.
- (1) Any single internal combustion engine with less than five hundred brake horsepower, or multiple engines with a combined brake horsepower rating less than five hundred brake horsepower.
 - (2) Any single internal combustion engine with a maximum rating of less than one thousand brake horsepower, or multiple engines with a combined brake horsepower rating of less than one thousand brake horsepower, and which operates a total of five hundred hours or less in a rolling twelve-month period.
 - (3) Any internal combustion engine, or multiple engines at the same facility, with a total combined actual emission rate of five tons [4.54 metric tons] per year or less of any air contaminant for which an ambient air quality standard has been promulgated in section 33-15-02-04.
 - (4) The exemptions listed in paragraphs 1, 2, 3 do not apply to engines that are a utility unit as defined in section 33-15-21-08.1 or are subject to a standard under chapter 33-15-22.
- d. Bench scale laboratory equipment used exclusively for chemical or physical analysis or experimentation.
- e. Portable brazing, soldering, or welding equipment.

f. The following equipment:

- (1) Comfort air conditioners or comfort ventilating systems which are not designed and not intended to be used to remove emissions generated by or released from specific units or equipment.
- (2) Water cooling towers and water cooling ponds unless used for evaporative cooling of process water, or for evaporative cooling of water from barometric jets or barometric condensers or used in conjunction with an installation requiring a permit.
- (3) Equipment used exclusively for steam cleaning.
- (4) Porcelain enameling furnaces or porcelain enameling drying ovens.
- (5) Unheated solvent dispensing containers or unheated solvent rinsing containers of sixty gallons [227.12 liters] capacity or less.
- (6) Equipment used for hydraulic or hydrostatic testing.

g. The following equipment or any exhaust system or collector serving exclusively such equipment:

- (1) Blast cleaning equipment using a suspension of abrasive in water.
- (2) Bakery ovens if the products are edible and intended for human consumption.
- (3) Kilns for firing ceramic ware, heated exclusively by gaseous fuels, singly or in combinations, and electricity.
- (4) Confection cookers if the products are edible and intended for human consumption.
- (5) Drop hammers or hydraulic presses for forging or metal working.
- (6) Die casting machines.

- (7) Photographic process equipment through which an image is reproduced upon material through the use of sensitized radiant energy.
 - (8) Equipment for drilling, carving, cutting, routing, turning, sawing, planing, spindle sanding, or disc sanding of wood or wood products, which is located within a facility that does not vent to the outside air.
 - (9) Equipment for surface preparation of metals by use of aqueous solutions, except for acid solutions.
 - (10) Equipment for washing or drying products fabricated from metal or glass; provided, that no volatile organic materials are used in the process and that no oil or solid fuel is burned.
 - (11) Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents.
- h. Natural draft hoods or natural draft ventilators.
- i. Containers, reservoirs, or tanks used exclusively for:
- (1) Dipping operations for coating objects with oils, waxes, or greases, if no organic solvents are used.
 - (2) Dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents.
 - (3) Storage of butane, propane, or liquefied petroleum or natural gas.
 - (4) Storage of lubricating oils.
 - (5) Storage of petroleum liquids except those containers, reservoirs, or tanks subject to the requirements of chapter 33-15-12.

- j. Gaseous fuel-fired or electrically heated furnaces for heat treating glass or metals, the use of which does not involve molten materials.
- k. Crucible furnaces, pot furnaces, or induction furnaces, with a capacity of one thousand pounds [453.59 kilograms] or less each, unless otherwise noted, in which no sweating or distilling is conducted, nor any fluxing conducted utilizing chloride, fluoride, or ammonium compounds, and from which only the following metals are poured or in which only the following metals are held in a molten state:
 - (1) Aluminum or any alloy containing over fifty percent aluminum; provided, that no gaseous chlorine compounds, chlorine, aluminum chloride, or aluminum fluoride are used.
 - (2) Magnesium or any alloy containing over fifty percent magnesium.
 - (3) Lead or any alloy containing over fifty percent lead, in a furnace with a capacity of five hundred fifty pounds [249.48 kilograms] or less.
 - (4) Tin or any alloy containing over fifty percent tin.
 - (5) Zinc or any alloy containing over fifty percent zinc.
 - (6) Copper.
 - (7) Precious metals.
- l. Open burning activities within the scope of section 33-15-04-02.
- m. Flares used to indicate some danger to the public.
- n. Sources or alterations to a source which are of minor significance as determined by the department.
- o. Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as

defined in ~~subdivision n~~ of subsection 1 of section 33-15-14-06.

14. Performance and emission testing.

- a. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Such tests must be conducted under the owner's or operator's permit to construct, and such permit is subject to the faithful completion of the test in accordance with this article.
- b. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to construct must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.
- c. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.
- d. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative, or from requiring the owner or operator to conduct any test at such time as the department may determine.

15. Responsibility to comply.

- a. Possession of a permit to construct does not relieve any person of the responsibility to comply with this article.
- b. The exemption of any stationary source from the requirements of a permit to construct by reason of

inclusion in subsection 13 does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

16. **Portable sources.** Sources which are designated to be portable and which are not subject to the requirements of chapter 33-15-15 are exempt from requirements to obtain a permit to construct. The owner or operator shall submit an application for a permit to operate prior to initiating operations.
17. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted under subsection 13 shall register the source with the department within such time limits and on such forms as the department may prescribe.
18. **Extensions of time.** The department may extend any of the time periods specified in subsections 4, 5, and 6 of section 33-15-14-02 upon notification of the applicant by the department.
19. **Amendment of permits.** The department may, when the public interest requires or when necessary to ensure the accuracy of the permit, modify any condition or information contained in the permit to construct. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, the department will provide:
 - a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification, and the opportunity for a public hearing, upon request, as well as written public comment.
 - b. A minimum of a thirty-day period for written public comment, with the opportunity for a public hearing during that thirty-day period, upon request.
 - c. Consideration by the department of all comments received in its order for modification.

The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective March 1, 1980; February 1, 1982; October 1, 1987; June 1, 1990; March 1, 1994; August 1, 1995; September 1, 1997; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2

Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

33-15-14-03. Minor source permit to operate.

1. Permit to operate required.

- a. Except as provided in subdivisions c and d, no person may operate or cause the routine operation of an installation or source designated in section 33-15-14-01 without applying for and obtaining, in accordance with this section, a permit to operate. Application for a permit to operate a new installation or source must be made at least thirty days prior to startup of routine operation. Those sources that received a permit to construct under section 33-15-14-02, need only submit a thirty-day prior notice of proposed startup to satisfy the requirement to apply for a permit to operate under this subdivision.
- b. No person may operate or cause the operation of an installation or source in violation of any permit to operate or any condition imposed upon a permit to operate or in violation of this article.
- c. Sources that are subject to the title V permitting requirements of section 33-15-14-06 are exempt from the requirements of this section except during the transitional period from a minor source permit to operate to a title V permit to operate. Existing

sources shall comply with all the requirements of this section until a title V permit to operate is issued. Fees for sources that meet the applicability requirements of section 33-15-14-06 shall be assessed based on section 33-15-23-04.

- d. Sources that are exempt from the requirement to obtain a permit to construct under subsection 33-15-14-02-13 are exempt from this section.
- e. Sources which are subject to the title V permitting requirements in section 33-15-14-06 based solely on their potential to emit may apply for a federally enforceable minor source permit to operate which would limit their potential to emit to a level below the title V permit to operate applicability threshold.
- f. Permits which are issued under this section which do not conform to the requirements of this section, including public participation under subdivision 33-15-14-03-5.a, and the requirements of any United States environmental protection agency regulations may be deemed not federally enforceable by the United States environmental protection agency.
- g. General permits: The department may issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other minor source permits to operate and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or apply for an individual minor source permit to operate. Without repeating the public participation procedures under subsection 33-15-14-03.5, the department may grant a source's request for authorization to operate under a general permit.

2. Application for permit to operate.

- a. Application for a permit to operate must be made by the owner or operator thereof on forms furnished by the department.

- b. Each application for a permit to operate must be accompanied by such performance tests results, information, and records as may be required by the department to determine whether the requirements of this article will be met. Such information may also be required by the department at any time when the source is being operated to determine compliance with this article.
 - c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the operation of the installation or source in accordance with this article.
3. **Standards for granting permits to operate.** No permit to operate may be granted unless the applicant shows to the satisfaction of the department that the source is in compliance with this article.
4. **Performance testing.**
- a. Before a permit to operate is granted, the applicant, if required by the department, shall conduct performance tests in accordance with methods and procedures required by this article or methods and procedures approved by the department. Such tests must be made at the expense of the applicant. The department may monitor such tests and may also conduct performance tests.
 - b. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Issuance of a minor source permit to operate is subject to the faithful completion of the test in accordance with this article.
 - c. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to operate must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to

construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.

- d. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.
- e. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative or from requiring the owner or operator to conduct any test at such time as the department may determine.

5. Action on applications.

a. Public participation: This subdivision is applicable to only those sources which apply for a federally enforceable minor source permit to operate which limits their potential to emit an air contaminant. The Department shall:

(1) Within ninety days of receipt of a complete application:

(a) Make a preliminary determination concerning issuance of the permit to operate.

(b) Make available in at least one location in the county or counties in which the source is located, a copy of the proposed permit and copies of or a summary of the information considered in developing the permit.

(c) Publish notice to the public by prominent advertisement, in the region affected, of the opportunity for written comment on the proposed permit. The public notice must include the proposed location of the source.

(d) Deliver a copy of the proposed permit and public notice to any state or federal

land manager, or Indian governing body whose lands will be significantly affected by the source's emissions. For purposes of this subparagraph, lands will be considered to be significantly affected if the source is located within thirty-one and seven hundredths miles (50 kilometers) of such land.

- (e) Provide a copy of the proposed permit, all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.
 - (2) Allow thirty days for public comment.
 - (3) Consider all public comments properly received, in making the final decision on the application.
 - (4) Allow the applicant to submit written responses to public comments received by the department. The applicants responses must be submitted to the department within twenty days of the close of the public comment period.
 - (5) Take final action on the application within thirty days of the applicant's response to the public comments.
 - (6) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.
- b. For those sources not subject to public participation under subdivision a, the department shall act within thirty days after receipt of an application for a permit to operate a new installation or source, and within thirty days after receipt of an application to operate an existing installation or source, and shall notify the applicant, in writing, of the approval, conditional approval, or denial of the application.

- c. The department shall set forth in any notice of denial the reasons for denial. A denial must be without prejudice to the applicant's right to a hearing before the department or for filing a further application after revisions are made to meet objections specified as reasons for the denial.
6. **Permit to operate - Conditions.** The department may impose any reasonable conditions upon a permit to operate. All emission limitations, controls, and other requirements imposed by conditions on the permit to operate must be at least as stringent as any applicable limitation or requirement contained in this article. Permit to operate conditions may include:
- a. Sampling, testing, and monitoring of the facilities or ambient air or both.
 - b. Trial operation and performance testing.
 - c. Prevention and abatement of nuisance conditions caused by operation of the facility.
 - d. Recordkeeping and reporting.
 - e. Compliance with applicable rules and regulations in accordance with a compliance schedule.
 - f. Limits on the hours of operation of a source or its processing rate, fuel usage or production rate when necessary to assure compliance with this article.
7. **Suspension or revocation of permit to operate.**
- a. The department may suspend or revoke a permit to operate for violation of this article, violations of a permit condition or failure to respond to a notice of violation or any order issued pursuant to this article.
 - b. Suspension or revocation of a permit to operate shall become final ten days after serving notice on the holder of the permit.
 - c. A permit to operate which has been revoked pursuant to this article must be surrendered forthwith to the department.

- d. No person may operate or cause the operation of an installation or source if the department denies or revokes a permit to operate.
8. **Transfer of permit to operate.** The holder of a permit to operate may not transfer it without the prior approval of the department.
9. **Renewal of permit to operate.**
 - a. Every permit to operate issued by the department after February 9, 1976, shall become void upon the fifth anniversary of its issuance. Applications for renewal of such permits must be submitted ninety days prior to such anniversary date. The department shall approve or disapprove such application within ninety days. If a source submits a complete application for a permit renewal at least ninety days prior to the expiration date, the source's failure to have a minor source permit to operate is not a violation of this section until the department takes final action on the renewal application.
 - b. The department may amend permits issued prior to February 9, 1976, so as to provide for avoidance upon the fifth anniversary of its issuance.
10. **[Reserved]**
11. **[Reserved]**
12. **Responsibility to comply.**
 - a. Possession of a minor source permit to operate does not relieve any person of the responsibility to comply with this article.
 - b. The exemption of any stationary source from the requirements to obtain a minor source permit to operate does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.
13. **Portable sources.** Sources which are designed to be portable and which are operated at temporary jobsites across the state may not be considered a new source by virtue of location changes. One application for a permit

to operate any portable source may be filed in accordance with this chapter, and subsequent applications are not required for each temporary jobsite. The permit to operate issued by the department shall be conditioned by such specific requirements as the department deems appropriate to carry out the provisions of sections 33-15-01-07 and 33-15-01-15.

14. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted from the requirement to obtain a minor source permit to operate to register the source with the department within such time limits and on such forms as the department may prescribe.
15. **Extensions of time.** The department may extend any of the time periods specified in this section upon notification of the applicant by the department.
16. **Amendment of permits.** When the public interest requires or when necessary to ensure the accuracy of the permit, the department may modify any condition or information contained in a minor source permit to operate. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, or modify a condition which limits the potential to emit of a source which possesses a federally enforceable permit, the department will provide:
 - a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification and the opportunity for a public hearing, upon request, as well as written public comment.
 - b. A minimum of a thirty-day period for written public comment with the opportunity for a public hearing during that thirty-day period, upon request.
 - c. Consideration by the department of all comments received.

The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective February 1, 1982; October 1, 1987; March 1, 1994; August 1, 1995; June 1, 2001; March 1, 2003.

General Authority: NDCC 23-25-03, 23-25-04.1, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.1, 23-25-04.2

33-15-14-04. Permit fees. Repealed effective March 1, 1994

33-15-14-05. Common provisions applicable to both permit to construct and permit to operate. Repealed effective March 1, 1994

33-15-14-06. Title V Permit to Operate.

1. **Definitions.** For purposes of this section:
 - a. "Affected source" means any source that includes one or more affected units.
 - b. "Affected state" means any state that is contiguous to North Dakota whose air quality may be affected by a source subject to a proposed title V permit, permit modification or permit renewal or which is within fifty miles [80.47 kilometers] of the permitted source.
 - c. "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under title ~~VI~~ IV of the Federal Clean Air Act.

d. "Applicable requirement" means all of the following as they apply to emissions units at a source that is subject to requirements of this section (including requirements that have been promulgated or approved by the United States environmental protection agency through rulemaking at the time of issuance but have future-effective compliance dates):

- (1) Any standard or other requirement provided for in the North Dakota state implementation plan approved or promulgated by the United State environmental protection agency through rulemaking under title I of the Federal Clean Air Act that implements the relevant requirements of the Federal Clean Air Act, including any revisions to that plan.
- (2) Any term or condition of any permit to construct issued pursuant to this chapter.
- (3) Any standard or other requirement under section 111 including section 111(d) of the Federal Clean Air Act.
- (4) Any standard or other requirement under section 112 of the Federal Clean Air Act including any requirement concerning accident prevention under section 112(r)(7) of the Federal Clean Air Act.
- (5) Any standard or other requirement of the acid rain program under title IV of the Federal Clean Air Act.
- (6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Federal Clean Air Act.
- (7) Any standard or other requirement governing solid waste incineration, under section 129 of the Federal Clean Air Act.
- (8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Federal Clean Air Act.

- (9) Any standard or other requirement for tank vessels under section 183(f) of the Federal Clean Air Act.
 - (10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Federal Clean Air Act.
 - (11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Clean Air Act, unless the administrator of the United States environmental protection agency has determined that such requirements need not be contained in a title V permit.
 - (12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Federal Clean Air Act.
- e. "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 Code of Federal Regulations 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this section, or in any other regulations implementing title V of the Federal Clean Air Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.
 - f. "Draft permit" means the version of a permit for which the department offers public participation or affected state review.
 - g. "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to

restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- h. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
- i. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act. This term does not alter or affect the definition of unit for purposes of title IV of the Federal Clean Air Act.
- j. "The environmental protection agency or the administrator" means the administrator of the United States environmental protection agency or the administrators designee.
- k. "Federal Clean Air Act" means the Federal Clean Air Act, as amended [42 U.S.C. 7401 et seq.].
- l. "Final permit" means the version of a title V permit issued by the department that has completed all review procedures required in this section.
- m. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.
- n. "General permit" means a title V permit to operate that meets the requirements of subdivision d of subsection 5.

o. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph 1 or 2. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the contaminant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the standard industrial classification manual, 1987.

(1) A major source under section 112 of the Federal Clean Air Act, which is defined as:

(a) For contaminants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons [9.07 metric tons] per year (tpy) or more of any hazardous air contaminant which has been listed pursuant to section 112(b) of the Federal Clean Air Act, twenty-five tons [22.67 metric tons] per year or more of any combination of such hazardous air contaminants, or such lesser quantity as the administrator of the United States environmental protection agency may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

- (b) For radionuclides, "major source" shall have the meaning specified by the administrator of the United States environmental protection agency by rule.
- (2) A major stationary source of air contaminants, that directly emits or has the potential to emit, one hundred tons [90.68 metric tons] per year or more of any air contaminant (including any major source of fugitive emissions of any such contaminant, as determined by rule by the administrator of the United States environmental protection agency). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:
- (a) Coal cleaning plants (with thermal dryers).
 - (b) Kraft pulp mills.
 - (c) Portland cement plants.
 - (d) Primary zinc smelters.
 - (e) Iron and steel mills.
 - (f) Primary aluminum ore reduction plants.
 - (g) Primary copper smelters.
 - (h) Municipal incinerators capable of charging more than two hundred fifty tons [226.80 metric tons] of refuse per day.
 - (i) Hydrofluoric, sulfuric, or nitric acid plants.
 - (j) Petroleum refineries.
 - (k) Lime plants.
 - (l) Phosphate rock processing plants.

- (m) Coke oven batteries.
 - (n) Sulfur recovery plants.
 - (o) Carbon black plants (furnace process).
 - (p) Primary lead smelters.
 - (q) Fuel conversion plants.
 - (r) Sintering plants.
 - (s) Secondary metal production plants.
 - (t) Chemical process plants.
 - (u) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input.
 - (v) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels.
 - (w) Taconite ore processing plants.
 - (x) Glass fiber processing plants.
 - (y) Charcoal production plants.
 - (z) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input.
 - (aa) Any other stationary source category which as of August 7, 1980 is being regulated under section 111 or 112 of the Federal Clean Air Act.
- p. "Permit modification" means a revision to a title V permit that meets the requirements of subdivision e of subsection 6.
- q. "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, under this section

(whether such costs are incurred by the department or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

- r. "Permit revision" means any permit modification or administrative permit amendment.
- s. "Potential to emit" means the maximum capacity of a stationary source to emit any air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator of the United States environmental protection agency and the department.
- t. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator of the United States environmental protection agency for review.
- u. "Regulated air contaminant" means the following:
 - (1) Nitrogen oxides or any volatile organic compounds.
 - (2) Any contaminant for which a national ambient air quality standard has been promulgated.
 - (3) Any contaminant that is subject to any standard promulgated under section 111 of the Federal Clean Air Act.
 - (4) Any class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.
 - (5) Any contaminant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Federal Clean Air Act, including sections 112(g), (j), and (r) of the Federal Clean Air Act, including the following:

- (a) Any contaminant subject to requirements under section 112(j) of the Federal Clean Air Act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Federal Clean Air Act, any contaminant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the Federal Clean Air Act; and
 - (b) Any contaminant for which the requirements of section 112(g)(2) of the Federal Clean Air Act have been met, but only with respect to the individual source subject to section 112(g)(2) of the Federal Clean Air Act requirement.
- v. "Regulated contaminant" for fee calculation, which is used only for chapter 33-15-23, means any "regulated air contaminant" except the following:
 - (1) Carbon monoxide.
 - (2) Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.
 - (3) Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.
- w. "Renewal" means the process by which a permit is reissued at the end of its term.
- x. "Responsible official" means one of the following:
 - (1) For a corporation: 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 decision-making functions for the corporation, or a duly authorized

representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- (a) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars).
 - (b) The delegation of authority to such representatives is approved in advance by the department.
- (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.
 - (3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the United States environmental protection agency).
 - (4) For affected sources:
 - (a) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Federal Clean Air Act or the regulations promulgated thereunder are concerned.
 - (b) The designated representative for any other purposes under this section.
- y. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring

(including test methods), recordkeeping, reporting, or compliance certification requirements.

- z. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act.
- aa. "Title V permit to operate or permit" (unless the context suggests otherwise) means any permit or group of permits covering a source that is subject to this section that is issued, renewed, amended, or revised pursuant to this section.
- bb. "Title V source" means any source subject to the permitting requirements of this section, as provided in subsection 2.

2. **Applicability.**

- a. This section is applicable to the following sources:
 - (1) Any major source.
 - (2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Federal Clean Air Act.
 - (3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Clean Air Act.
 - (4) Any affected source.
 - (5) Any source in a source category designated by the administrator of the United States environmental protection agency.
- b. The following source categories are exempt from the requirements of this section:

- (1) All sources listed in subdivision a that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Federal Clean Air Act, are exempt from the obligation to obtain a title V permit until such time as the administrator of the United States environmental protection agency completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions.
- (2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or section 112 of the Federal Clean Air Act after July 21, 1992, those the administrator of the United States environmental protection agency determines to be exempt from the requirement to obtain a title V permit at the time that the new standard is promulgated.
- (3) Any source listed as exempt from the requirement to obtain a permit under this section may opt to apply for a title V permit. Sources that are exempted by paragraphs 1 and 2 of this subdivision and which do not opt to apply for a title V permit to operate are subject to the requirements of section 33-15-14-03.
- (4) The following source categories are exempted from the obligation to obtain a permit under this section.
 - (a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 60, subpart AAA - standards of performance for new residential wood heaters.
 - (b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61, subpart M - national emission standard for hazardous air pollutants for

asbestos, section 61.145, standard for demolition and renovation.

- c. For major sources, the department will include in the permit all applicable requirements for all relevant emissions units in the major source.

For any nonmajor source subject to the requirements of this section, the department will include in the permit all applicable requirements applicable to the emissions units that cause the source to be subject to this section.

- d. Fugitive emissions from a source subject to the requirements of this section shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

- 3. **Scope.** Nothing within this section shall relieve the owner or operator of a source of the requirement to obtain a permit to construct under section 33-15-14-02 or to comply with any other applicable standard or requirement of this article.

- 4. **Permit applications.**

- a. **Duty to apply.** For each title V source, the owner or operator shall submit a timely and complete permit application in accordance with this subdivision.

- (1) **Timely application.**

- (a) A timely application for a source applying for a title V permit for the first time is one that is submitted within one year of the source becoming subject to this section.

- (b) Title V sources required to meet the requirements under section 112(g) of the Federal Clean Air Act, or to have a permit to construct under section 33-15-14-02, shall file a complete application

to obtain the title V permit or permit revision within twelve months after commencing operation. Where an existing title V permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

- (c) For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than eighteen months, prior to the date of permit expiration.
- (2) Complete application. To be deemed complete, an application must provide all information required pursuant to subdivision c, except that applications for a permit revision need supply such information only if it is related to the proposed change. Information required under subdivision c must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with subdivision d. Unless the department determines that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in paragraph 3 of subdivision a of subsection 6. If, while processing an application that has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subdivision b of subsection 6, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

(3) Confidential information. If a source has submitted to the department under a claim of confidentiality, the source must also submit a copy of such information directly to the administrator of the United States environmental protection agency when directed to do so by the department.

b. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

c. Standard application form and required information. All applications for a title V permit to operate shall be made on forms supplied by the department. Information as described below for each emissions unit at a title V source shall be included in the application. Detailed information for emissions units or activities that have the potential to emit less than the following quantities of air contaminants (insignificant units or activities) need not be included in permit applications:

Particulate: 2 tons [1.81 metric tons] per year
Inhalable particulate: 2 tons [1.81 metric tons] per year
Sulfur dioxide: 2 tons [1.81 metric tons] per year
Hydrogen sulfide: 2 tons [1.81 metric tons] per year
Carbon monoxide: 2 tons [1.81 metric tons] per year
Nitrogen oxides: 2 tons [1.81 metric tons] per year
Ozone: 2 tons [1.81 metric tons] per year
Reduced sulfur compounds: 2 tons [1.81 metric tons] per year
Volatile organic compounds: 2 tons [1.81 metric tons] per year
All other regulated contaminants including those in section 112(b)

of the Federal Clean Air Act: 0.5 tons [0.45 metric tons] per year

Where a contaminant could be placed in more than one category, the smallest emission level applies.

However, for insignificant activities or emissions units, a list of such activities or units must be included in the application. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under section 33-15-23-04.

The application, shall, as a minimum, include the elements specified below:

- (1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.
- (2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.
- (3) The following emissions-related information:
 - (a) All emissions of contaminants for which the source is major, and all emissions of regulated air contaminants. A permit application shall describe all emissions of regulated air contaminants emitted from any emissions unit, except when such units are exempted under this subdivision.
 - (b) Identification and description of all points of emissions described in subparagraph a in sufficient detail to establish the basis for fees and applicability of requirements of the Federal Clean Air Act and this article.

- (c) Emissions rates in tons per year, in terms of the applicable standard, and terms that are necessary to establish compliance with the applicable compliance method.
 - (d) Fuels, fuel use, raw materials, production rates, and operating schedules.
 - (e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 - (f) Limitations on source operation affecting emissions or any work practice standards, when applicable, for all regulated contaminants.
 - (g) Other information required by any applicable requirement including information related to stack height limitations developed pursuant to chapter 33-15-18.
 - (h) Calculations on which the information in subparagraphs a through g is based.
- (4) The following air pollution control requirements:
- (a) Citation and description of all applicable requirements; and
 - (b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.
- (5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Federal Clean Air Act or of this article or to determine the applicability of such requirements.
- (6) An explanation of any proposed exemptions from otherwise applicable requirements.

- (7) Information that the department determines to be necessary to define alternative operating scenarios identified by the source or to define permit terms and conditions.
- (8) A compliance plan for all title V sources that contains all the following:
 - (a) A description of the compliance status of the source with respect to all applicable requirements.
 - (b) A description as follows:
 - [1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - [2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
 - [3] For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
 - (c) A compliance schedule as follows:
 - [1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - [2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that

become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

- [3] A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- (d) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.
- (e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.
- (9) Requirements for compliance certification, including the following:

- (a) A certification of compliance with all applicable requirements by a responsible official consistent with subdivision d and section 114(a)(3) of the Federal Clean Air Act;
 - (b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and
 - (d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Federal Clean Air Act.
- (10) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Federal Clean Air Act.
- d. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

5. **Permit content.**

- a. Standard permit requirements. Each permit issued under this section shall include, as a minimum, the following elements:
 - (1) Emission limitations and standards, including those operational requirements and limitations

that assure compliance with all applicable requirements at the time of permit issuance.

- (a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - (b) The permit must state that, if an applicable requirement of the Federal Clean Air Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Federal Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator of the United States environmental protection agency and the department.
 - (c) If the state implementation plan allows a determination of an alternative emission limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the department elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- (2) Permit duration. Each title V permit to operate shall expire upon the fifth anniversary of its issuance.
 - (3) Monitoring and related recordkeeping and reporting requirements.
 - (a) Each permit shall contain the following requirements with respect to monitoring:
 - [1] All monitoring and analysis procedures or test methods required under applicable monitoring and

testing requirements, including subsection 10 of this section and any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Federal Clean Air Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

- [2] If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subparagraph c. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this item; and
- [3] As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.

- (b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, if applicable, the following:

[1] Records of required monitoring information that include the following:

[a] The date, place as defined in the permit, and time of sampling or measurements;

[b] The date(s) analyses were performed;

[c] The company or entity that performed the analyses;

[d] The analytical techniques or methods used;

[e] The results of such analyses; and

[f] The operating conditions as existing at the time of sampling or measurement;

[2] Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

[1] Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be

certified by a responsible official consistent with subdivision d of subsection 4.

[2] Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The department shall define "prompt" in the permit consistent with chapter 33-15-01 and the applicable requirements.

- (4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Federal Clean Air Act or the regulations promulgated thereunder.
- (a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to title IV of the Federal Clean Air Act, or the regulations promulgated thereunder, provided that such increases do not require a permit revision under any other applicable requirement.
- (b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
- (c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Federal Clean Air Act.
- (5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- (6) Provisions stating the following:

- (a) The permittee must comply with all conditions of the title V permit. Any permit noncompliance constitutes a violation of the Federal Clean Air Act and this article and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- (b) It shall not be 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.
- (c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- (d) The permit does not convey any property rights of any sort, or any exclusive privilege.
- (e) The permittee must furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee must also furnish such records directly to the administrator of the United States environmental protection agency along with a claim of confidentiality.

- (7) A provision to ensure that the source pays fees to the department consistent with the fee schedule in chapter 33-15-23.
- (8) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan.
- (9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms and conditions:
 - (a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - (b) Shall extend the permit shield described in subdivision f to all terms and conditions under each such operating scenario; and
 - (c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this section.
- (10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements, including the state implementation plan, provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
 - (a) Shall include all terms required under subdivisions a and c to determine compliance;

- (b) Shall extend the permit shield described in subdivision f to all terms and conditions that allow such increases and decreases in emissions; and
 - (c) Must meet all applicable requirements and requirements of this section.
- (11) If a permit applicant requests it, the department shall issue permits that contain terms and conditions, including all terms required under subdivisions a and c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements provided the changes in emissions are not modifications under title I of the Federal Clean Air Act and the changes do not exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. The permittee shall supply written notification at least seven days prior to the change to the department and the administrator of the United States environmental protection agency and shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. The permit shield described in subdivision f shall extend to terms and conditions that allow such increases and decreases in emissions.

b. Federally enforceable requirements.

- (1) All terms and conditions in a title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator of the United States environmental protection agency and citizens under the Federal Clean Air Act.
 - (2) Notwithstanding paragraph 1, the department shall specifically designate as not being federally enforceable under the Federal Clean Air Act any terms and conditions included in the permit that are not required under the Federal Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of subsections 6 and 7, or of this subsection, other than those contained in this subdivision.
- c. Compliance requirements. All title V permits shall contain the following elements with respect to compliance:
- (1) Consistent with paragraph 3 of subdivision a, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a title V permit shall contain a certification by a responsible official that meets the requirements of subdivision d of subsection 4.
 - (2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to perform the following:
 - (a) Enter upon the permittee's premises where a title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
 - (d) As authorized by the Federal Clean Air Act and this article, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
- (3) A schedule of compliance consistent with paragraph 8 of subdivision c of subsection 4.
- (4) Progress reports consistent with an applicable schedule of compliance and paragraph 8 of subdivision c of subsection 4 to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:
- (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
 - (b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
- (a) The frequency, which is annually or such more frequent periods as specified in the

applicable requirement or by the department, of submissions of compliance certifications;

(b) In accordance with paragraph 3 of subdivision a, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices. The means for monitoring shall be contained in applicable requirements or United States environmental protection agency guidance;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

[1] The identification of each term or condition of the permit that is the basis of the certification;

[2] The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph 3 of subdivision a;

[3] The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in item 2 of this subparagraph. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to

compliance any periods during which compliance is required and in which an excursion or exceedance as defined under subsection 10 of this section occurred; and

[4] Such other facts as the department may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the administrator of the United States environmental protection agency as well as to the department; and

(e) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Federal Clean Air Act.

(6) Such other provisions as the department may require.

d. General permits.

(1) The department may, after notice and opportunity for public participation provided under subdivision h of subsection 6, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other title V permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of subdivision f, the source shall be subject to enforcement action for operation without a title V permit to operate if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Federal Clean Air Act. The department is not required to issue a general permit in lieu of individual title V permits.

(2) Title V sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or must apply for a title V permit to operate consistent with subsection 4. The department may, in the general permit, provide for applications which deviate from the requirements of subsection 4, provided that such applications meet the requirements of title V of the Federal Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under subdivision h of subsection 6, the department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

e. Temporary sources. The department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

- (1) Conditions that will assure compliance with all applicable requirements at all authorized locations;
- (2) Requirements that the owner or operator notify the department at least ten days in advance of each change in location; and
- (3) Conditions that assure compliance with all other provisions of this section.

f. Permit shield.

- (1) Except as provided in this section, upon written request by the applicant, the department shall include in a title V permit to operate a provision stating that compliance with the conditions of the permit shall be

deemed compliance with any applicable requirement as of the date of permit issuance, provided that:

- (a) Such applicable requirements are included and are specifically identified in the permit; or
 - (b) The department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
- (2) A title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (3) Nothing in this subdivision or in any title V permit shall alter or affect the following:
- (a) The provisions of section 303 of the Federal Clean Air Act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section;
 - (b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 - (c) The applicable requirements of the acid rain program, consistent with section 408(a) of the Federal Clean Air Act; or
 - (d) The ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the Federal Clean Air Act.

g. Emergency provision.

- (1) An "emergency" means any situation arising from sudden and reasonably unforeseeable

events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- (2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 3 are met.
- (3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (a) An emergency occurred and that the permittee can identify the causes of the emergency;
 - (b) The permitted facility was at the time being properly operated;
 - (c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (d) The permittee submitted notice of the emergency to the department within one working day of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of item 2 of subparagraph c of paragraph 3 of subdivision a of subsection 5. This notice must contain a description of the emergency, any steps

taken to mitigate emissions, and corrective actions taken.

- (4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (5) This provision is in addition to any emergency or upset provision contained in any applicable requirement and the malfunction notification required under subdivision b of subsection 2 of section 33-15-01-13 when a threat to health and welfare would exist.

6. Permit issuance, renewal, reopenings, and revisions.

a. Action on application.

- (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:
 - (a) The department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subdivision d of subsection 5;
 - (b) Except for modifications qualifying for minor permit modification procedures under paragraphs 1 and 2 of subdivision e, the department has complied with the requirements for public participation under subdivision h;
 - (c) The department has complied with the requirements for notifying and responding to affected states under subdivision b of subsection 7;
 - (d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this section; and

- (e) The administrator of the United States environmental protection agency has received a copy of the proposed permit and any notices required under subdivisions a and b of subsection 7, and has not objected to issuance of the permit under subdivision c of subsection 7 within the time period specified therein.
- (2) Except for applications received during the initial transitional period described in 40 CFR 70.4(b)(11) or under regulations promulgated under title IV or title V of the Federal Clean Air Act for the permitting of affected sources under the acid rain program, the department shall take final action on each permit application, including a request for permit modification or renewal, within eighteen months after receiving a complete application.
- (3) The department shall provide notice to the applicant of whether the application is complete. Unless the department requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through the minor permit modification procedures, in paragraphs 1 and 2 of subdivision e, a completeness determination is not required.
- (4) The department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The department shall send this statement to United States environmental protection agency and to any other person who requests it.
- (5) The submittal of a complete application shall not affect the requirement that any source have a permit to construct under section 33-15-14-02.

b. Requirement for a permit.

- (1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.
- (2) A permit revision is not required for section 502(b)(10) changes provided:
 - (a) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or title I of the Federal Clean Air Act.
 - (b) The changes do not exceed the emissions allowable under the title V permit whether expressed therein as a rate of emissions or in terms of total emissions.

- (c) A permit to construct under section 33-15-14-02 has been issued, if required.
- (d) The facility provides the department and the administrator of the United States environmental protection agency with written notification at least seven days in advance of the proposed change. The written notification shall include a description of each change within the permitted facility, the date on which the change will occur, any change in emissions and any permit term or condition that is no longer applicable as a result of the change.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

- (3) A permit revision is not required for changes that are not addressed or prohibited by the permit provided:
 - (a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.
 - (b) The source must provide contemporaneous written notice to the department and the administrator of the United States environmental protection agency of each such change, except for changes that qualify as insignificant under the provisions of subdivision c of subsection 4. Such written notice shall describe each such change, including the date, any change in emissions, contaminants emitted, and any applicable requirement that would apply as a result of the change.
 - (c) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air contaminant subject to an applicable requirement, but not otherwise regulated

under the permit, and the emissions resulting from those changes.

- (d) The changes are not subject to any requirements under title IV of the Federal Clean Air Act.
- (e) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 of this article or any provision of title I of the Federal Clean Air Act.
- (f) A permit to construct under section 33-15-14-02 has been issued, if required.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

c. Permit renewal and expiration.

- (1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and the United States environmental protection agency review, that apply to initial permit issuance; and
- (2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subdivision b of subsection 6 and subparagraph c of paragraph 1 of subdivision a of subsection 4.

d. Administrative permit amendments.

- (1) An "administrative permit amendment" is a permit revision that:
 - (a) Corrects typographical errors;
 - (b) Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

- (c) Requires more frequent monitoring or reporting by the permittee;
 - (d) Allows for a change in ownership or operational control of a source if the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department;
 - (e) Incorporates into the title V permit the requirements from a permit to construct, provided that the permit to construct review procedure is substantially equivalent to the requirements of subsections 6 and 7 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in subsection 5; or
 - (f) Incorporates any other type of change which the administrator of the United States environmental protection agency has approved as being an administrative permit amendment as part of the approved title V operating permit program.
- (2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.
- (3) Administrative permit amendment procedures. An administrative permit amendment may be made by the department consistent with the following:
- (a) The department shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without

providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this subdivision.

(b) The department shall submit a copy of the revised permit to the administrator of the United States environmental protection agency.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request provided a permit to construct under section 33-15-14-02 has been issued, if required.

(4) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in subdivision f of subsection 5 for administrative permit amendments made pursuant to subparagraph e of paragraph 1 of subdivision d which meet the relevant requirements of subsections 5, 6 and 7 of section 33-15-14-06 for significant permit modifications.

e. Permit modification. A permit modification is any revision to a title V permit that cannot be accomplished under the provisions for administrative permit amendments under subdivision d of this subsection. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(1) Minor permit modification procedures.

(a) Criteria.

[1] Minor permit modification procedures may be used only for those permit modifications that:

[a] Do not violate any applicable requirement;

- [b] Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
 - [c] Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - [d] Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Clean Air Act;
 - [e] Are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act; and
 - [f] Are not required to be processed as a significant modification.
- [2] Notwithstanding item 1 of this subparagraph and subparagraph a of

paragraph 2 of subdivision e, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan, or in applicable requirements promulgated by the United States environmental protection agency.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

- [1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- [2] The source's suggested draft permit;
- [3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
- [4] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. Within five working days of receipt of a complete permit modification application,

the department shall notify the administrator of the United States environmental protection agency and affected states of the requested permit modification. The department shall promptly send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

- (d) Timetable for issuance. The department may not issue a final permit modification until after the United States environmental protection agency forty-five day review period or until the United States environmental protection agency has notified the department that the United States environmental protection agency will not object to issuance of the permit modification, whichever is first, although the department can approve the permit modification prior to that time. Within ninety days of the department's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five day review period under subdivision c of subsection 7, whichever is later, the department shall:

- [1] Issue the permit modification as proposed;
- [2] Deny the permit modification application;
- [3] Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- [4] Revise the draft permit modification and transmit to the administrator the new proposed permit modification

as required by subdivision a of subsection 7.

- (e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the department allows the source to make the proposed change prior to taking action specified in items 1, 2 and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.
 - (f) The permit shield under subdivision f of subsection 5 shall not extend to minor permit modifications.
- (2) Group processing of minor permit modifications. Consistent with this paragraph, the department may modify the procedure outlined in paragraph 1 to process groups of a source's applications for certain modifications eligible for minor permit modification processing.
- (a) Criteria. Group processing of modifications may be used only for those permit modifications:
 - [1] That meet the criteria for minor permit modification procedures under item 1 of subparagraph a of paragraph 1 of subdivision 1; and
 - [2] That collectively are below the threshold level which is ten percent

of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in subsection 1, or five tons [4.54 metric tons] per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

- [1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.
- [2] The source's suggested draft permit.
- [3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.
- [4] A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under item 2 of subparagraph a of paragraph 2 of subdivision e.
- [5] Certification, consistent with subdivision d of subsection 4, that the source has notified the United States environmental protection agency of the proposed modification. Such notification need only contain

a brief description of the requested modification.

[6] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under item 2 of subparagraph a of paragraph 2 of subdivision e, whichever is earlier, the department shall meet its obligation under paragraph 1 of subdivision a of subsection 7 and paragraph 1 of subdivision b of subsection 7 to notify the administrator of the United States environmental protection agency and affected states of the requested permit modifications. The department shall send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision c within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.

- (e) Source's ability to make change. The provisions of subparagraph e of paragraph 1 apply to modifications eligible for group processing.
 - (f) The permit shield under subdivision f of subsection 5 shall not extend to group processing of minor permit modifications.
- (3) Significant modification procedures.
- (a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this subsection that would render existing permit compliance terms and conditions irrelevant.
 - (b) Significant permit modifications shall meet all requirements of this section, including those for applications, public participation, review by affected states, and review by the United States environmental protection agency, as they apply to permit issuance and permit renewal. The department shall complete review of significant permit modifications within nine months after receipt of a complete application.

f. Reopening for cause.

- (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

- (a) Additional applicable requirements under the Federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.
 - (b) Additional requirements, including excess emissions requirements, become applicable to an affected source under title IV of the Federal Clean Air Act or the regulations promulgated thereunder. Upon approval by the administrator of the United States environmental protection agency, excess emissions offset plans shall be deemed to be incorporated into the permit.
 - (c) The department or the United States environmental protection agency determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - (d) The administrator of the United States environmental protection agency or the department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.
- (2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

- (3) Reopenings under paragraph 1 shall not be initiated before a notice of such intent is provided to the title V source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.
- g. Reopenings for cause by the United States environmental protection agency.
- (1) If the administrator of the United States environmental protection agency finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subdivision f, within ninety days after receipt of such notification, the department shall forward to the United States environmental protection agency a proposed determination of termination, modification, or revocation and reissuance, as appropriate.
 - (2) The administrator of the United States environmental protection agency will review the proposed determination from the department within ninety days of receipt.
 - (3) The department shall have ninety days from receipt of the United States environmental protection agency objection to resolve any objection that the United States environmental protection agency makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.
 - (4) If the department fails to submit a proposed determination or fails to resolve any objection, the administrator of the United States environmental protection agency will terminate, modify, or revoke and reissue the permit after taking the following actions:
 - (a) Providing at least thirty days' notice to the permittee in writing of the reasons for any such action.

- (b) Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.
- h. Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be subject to procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:
 - (1) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice; to persons on a mailing list developed by the department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;
 - (2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the department that are relevant to the permit decision; a brief description of the comment procedures required by this subsection; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled;
 - (3) The department shall provide such notice and opportunity for participation by affected states as is provided for by subsection 7;

- (4) The department shall provide at least thirty days for public comment and shall give notice of any public hearing at least thirty days in advance of the hearing; and
- (5) The department shall keep a record of the commenters and also of the issues raised during the public participation process. These records shall be available to the public.

7. Permit review by the United States environmental protection agency and affected states.

a. Transmission of information to the administrator.

- (1) The department shall provide a copy of each permit application including any application for a permit modification (including the compliance plan), to the administrator of the United States environmental protection agency except that the applicant shall provide such information directly to the administrator of the United States environmental protection agency when directed to do so by the department. The department shall provide a copy of each proposed permit and each final title V permit to operate to the administrator of the United States environmental protection agency. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the United States environmental protection agency's national database management system.
- (2) The department may waive the requirements of paragraph 1 and paragraph 1 of subdivision b for any category of sources (including any class, type, or size within such category) other than major sources upon approval by the administrator or the United States environmental protection agency.
- (3) The department shall keep these records for at least five years.

b. Review by affected states.

- (1) The department shall give notice of each draft permit to any affected state on or before the time that the notice to the public under subdivision h of subsection 6 is given, except to the extent paragraphs 1 and 2 of subdivision e of subsection 6 requires the timing of the notice to be different.
- (2) As part of the submittal of the proposed permit to the administrator of the United States environmental protection agency (or as soon as possible after the submittal for minor permit modification procedures allowed under paragraph 1 and 2 of subdivision e of subsection 6) the department shall notify the administrator of the United States environmental protection agency and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this section.

- c. United States environmental protection agency objection: No permit for which an application must be transmitted to the administrator of the United States environmental protection agency under subdivision a shall be issued if the administrator of the United States environmental protection agency objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.
- d. Public petitions to the administrator of the United States environmental protection agency. If the administrator of the United States environmental protection agency does not object in writing under subdivision c, any person may petition the administrator of the United States environmental protection agency within sixty days after the expiration of the administrator's forty-five-day review period to make such objection. Any such petition shall be based only on objections to the

permit that were raised with reasonable specificity during the public comment period provided for in subdivision h of subsection 6, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator of the United States environmental protection agency objects to the permit as a result of a petition filed under this subdivision, the department shall not issue the permit until the United States environmental protection agency's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five day review period and prior to the United States environmental protection agency objection. If the department has issued a permit prior to receipt of the United States environmental protection agency objection under this subdivision, the department may thereafter issue only a revised permit that satisfies the United States environmental protection agency's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

- e. Prohibition on default issuance. The department shall issue no title V permit to operate, including a permit renewal or modification, until affected states and the United States environmental protection agency have had an opportunity to review the proposed permit as required under this subsection.

8. Judicial review of title V permit to operate decisions.

- a. The applicant, any person who participated in the department's public participation process, and any other person who could obtain judicial review under North Dakota Century Code section 28-32-42 may obtain judicial review provided such appeal is filed in accordance with North Dakota Century Code section 28-32-42 within thirty days after notice of the final permit action.
- b. The department's failure to take final action on an application for a permit, permit renewal, or permit

revision within the time frames referenced in this section shall be appealable in accordance with North Dakota Century Code section 28-32-42 within thirty days after expiration of the applicable time frames.

- c. In accordance with North Dakota Century Code chapter 28-32, the mechanisms outlined in this subsection shall be the exclusive means for judicial review of permit decisions referenced in this section.
- d. Solely for the purpose of obtaining judicial review in state court, final permit action shall include the failure of the department to take final action on an application for a permit, permit renewal, or permit revision within the time frames referenced in this section.
- e. Failure to take final action within ninety days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements) shall be considered final action and subject to judicial review in state court.

9. **Enforcement.** The department may suspend, revoke or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate which has been revoked or terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.

10. **Compliance assurance monitoring.** Except as noted below, 40 Code of Federal Regulations, part 64, compliance assurance monitoring, as it exists on January 31, 2004, is incorporated by reference.

- a. "Administrator" means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the department and the administrator of the United States environmental protection agency.

- b. Part 70 permit means a Title V permit to operate.
- c. Permitting authority means the department.

History: Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; March 1, 2003; February 1, 2005.

General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

33-15-14-07. Source exclusions from title V permit to operate requirements.

1. **Purpose.** The purpose of this section is to clarify which sources are minor sources with respect to section 33-15-14-06. The owner or operator of any source that would be classified as a major source under section 33-15-14-06 and which is not specifically excluded by this section shall comply with the requirements of section 33-15-14-06.
2. **Definitions.** For purposes of this section:
 - a. "Bulk gasoline plant" means any bulk gasoline distribution facility that has a gasoline throughput less than or equal to twenty thousand gallons [75700 liters] per day and that receives gasoline by truck rather than by rail.
 - b. "Coatings" means coatings plus diluents plus cleanup solvents.
 - c. "Fountain solution additives" includes isopropyl alcohol, n-propyl alcohol, n-butanol, and alcohol substitutes.
 - d. "Hazardous air contaminant" means any air contaminant listed pursuant to subsection 112(b) of the Federal Clean Air Act.
 - e. "Refueling positions" means the number of vehicles that could be dispensing simultaneously at a gasoline service station.
3. **Applicability.**

- a. The owner or operator of the following stationary sources is not required to obtain a Title V permit to operate under section 33-15-14-06 if the conditions of this section are met:
- (1) Gasoline service stations.
 - (2) Gasoline bulk plants.
 - (3) Coating sources.
 - (4) Printing, publishing, and packaging operations.
 - (5) Degreasers using volatile organic solvents.
 - (6) Hot mix asphalt plants.
- b. Any facility obtaining coverage under this section must submit a notification in writing to the department within ninety days of publication of this section unless specifically exempted from this requirement in the applicable subdivision of this section. The notification must contain the following information:
- (1) Facility name, location, and nature of business.
 - (2) A list of all the sources of air contaminants at the facility.
 - (3) The condition of this section which is applicable to the facility.
 - (4) Total material usage, source capacity, or throughput for the previous month or twelve months at the facility, in accordance with the subdivision that is applicable to the facility.
 - (5) A signed statement accepting the throughput or usage limitation.
- c. Complying with the conditions of this section does not exempt the owner or operator of a facility from the obligation to apply for and obtain a permit to construct or a minor source permit to operate

unless specifically exempted in section 33-15-14-02 or 33-15-14-03.

- d. The owner or operator of any facility listed in subdivision a which has potential emissions that would classify it as a major source even after the conditions of this section are met, or are not able to comply with the applicable conditions, shall obtain a Title V permit to operate or a minor source permit to operate which limits the potential to emit of the source to a level below the major source threshold.
- e. Complying with the conditions of this section does not relieve the owner or operator of a source of the responsibility to comply with any other applicable requirements of this article.
- f. If the facility deviates from any condition, limit, or requirement of this section, a report must be submitted to the department within thirty days of the deviation containing the following information:
 - (1) The facility's name and location.
 - (2) Applicable condition, limit, or requirement for the facility for which a deviation occurred.
 - (3) A summary of the records showing the deviation, accompanied by an explanation of the deviation.
 - (4) A plan of action to prevent future occurrences of any deviation at the facility.
- g. All records required by this section must be maintained for a period of five years from the last date of entry. The records must be available for inspection or submittal to the department upon request. If a facility is limited by a material usage, capacity, or throughput based on a twelve-month rolling period, a log must be updated monthly to include the previous twelve months' total material usage, capacity, or throughput.

4. Exclusion standards.

a. Gasoline service stations. The owner or operator of sources where gasoline dispensing operations account for more than ninety percent of all emissions from the facility is not required to obtain a title V permit to operate if the following conditions are met.

(1) No vapor recovery is used:

(a) The source's total sales of gasoline must not exceed three hundred eighty thousand gallons [1438300 liters] per month in any calendar month. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.

(b) If the number of refueling positions is no more than seventeen at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.

(2) Stage I vapor recovery is used:

(a) The source's total sales of gasoline must not exceed six hundred thirty thousand gallons [2384800 liters] per month in any calendar year. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.

(b) If the number of refueling positions is no more than twenty-nine at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.

b. Gasoline bulk plants. The owner or operator of gasoline bulk plants where gasoline loading and unloading operations account for more than ninety percent of all emissions from the source are covered by this subdivision. To demonstrate compliance with the twenty thousand gallons [75700 liters] per day of gasoline definition of a bulk

plant, monthly records of throughput must be maintained at the source.

c. Coating sources.

(1) The owner or operator of sources where surface coating operations account for more than ninety percent of all hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in subparagraph a or b are met.

(a) The source's total usage of surface coatings must not exceed two hundred fifty gallons [946.25 liters] of coatings per month in any calendar month nor exceed three thousand gallons [11355 liters] of coatings per twelve-month period. The coatings are limited to six pounds per gallon [719 grams per liter] of any individual hazardous air contaminant. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The source's total hazardous air contaminant emissions shall not exceed ten tons per twelve-month period. Hazardous air contaminant emissions must be calculated by multiplying the surface coating material usage in gallons by the individual hazardous air contaminant content in pounds per gallon. To demonstrate compliance with the emissions limitation, the emissions must be calculated on a monthly basis and recorded in a log. All records of material usage, hazardous air contaminant content and emissions must be maintained at the facility.

(2) The owner or operator of an automobile refinishing shop where operations account for more than ninety percent of volatile organic compound emissions and hazardous air contaminant emissions is not required to

obtain a title V permit to operate if the usage of coatings is less than two hundred fifty gallons [9946.25 liters] per month or three thousand gallons [11355 liters] of coatings per twelve-month period. This item does not apply to facilities capable of refinishing vehicles other than automobiles or trucks. Sources are exempt from the notification requirements under subdivision b of subsection 3 if:

- (a) The auto refinishing shop business is entirely, or almost entirely, for collision repairs and the business has two or fewer bays;
- (b) Substantial portions of the auto refinishing shop business are devoted to repainting entire vehicles and only has one bay devoted to painting; or
- (c) The auto refinishing shop business does not have the physical or operational capability to do more than fifty jobs per week.

d. Printing, publishing, and packaging operations.

(1) The owner or operator of facilities where sheetfed (nonheatset) offset lithography or nonheatset web offset lithography printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.

- (a) The facility must use less than fourteen thousand two hundred seventy-five gallons [54030 liters] of cleaning solvent and fountain solution additives in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
- (b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials

containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

- (c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
- (2) The owner or operator of facilities where heatset web offset lithography printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
- (a) The facility must use less than one hundred thousand pounds [45.36 megagrams] of ink, cleaning solvent, and fountain solution additives in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve month rolling

period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

- (3) The owner or operator of facilities where screen printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
 - (a) The facility must use less than fourteen thousand two hundred seventy-five gallons [54030 liters] of the sum of solvent-based inks, cleaning solvents, adhesives, and coatings in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
- (4) The owner or operator of facilities, where flexography or rotogravure printing operations with water-based or ultraviolet-cured inks, coatings, and adhesives are conducted, is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
 - (a) The facility must use less than four hundred thousand pounds [181 megagrams] of the sum of solvent-based inks, cleaning solvents, and adhesives in any twelve-month rolling period.

liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

- e. Degreasers using volatile organic solvents. The owner or operator of facilities where degreasing operations account for more than ninety percent of all volatile organic compound emissions and hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in paragraph 1 or 2 are met.
 - (1) If non-halogenated solvents are used, the usage is limited to two thousand two hundred gallons [8327 liters] of any one solvent-containing material and five thousand four hundred gallons [20439 liters] of any combination of solvent-containing materials in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.
 - (2) If halogenated solvents are used, including methyl chloroform, trichloroethane, and methylene chloride, the usage is limited to one thousand two hundred gallons [4542 liters] of any one solvent-containing material and two thousand nine hundred gallons [10976 liters] of any combination of solvent-containing materials in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.

- f. Hot mix asphalt plants. The owner or operator of facilities where hot mix asphalt production operations account for more than ninety percent of all emissions from the facility, is not required to obtain a title V permit to operate if the amount of hot mix asphalt produced does not exceed two hundred fifty thousand tons [226757 metric tons] in any twelve-month rolling period. To demonstrate compliance with this limit, monthly records of hot mix asphalt produced must be maintained at the facility. Sources that are excluded under this subdivision must obtain a minor source permit to operate under section 33-15-14-03.

History: Effective June 1, 2001.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

- (b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
- (5) The owner or operator of facilities where flexography or rotogravure printing operations with solvent inks are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
- (a) The facility must use less than one hundred thousand pounds [45.36 megagrams] of the sum of ink, coatings, adhesives, dilution solvents and cleaning solvents in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
 - (c) The facility must use less than one thousand three hundred thirty-three gallons [5045

CHAPTER 33-15-15
PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Section

33-15-15-01 General Provisions [Repealed]
33-15-15-01.1 Purpose
33-15-15-01.2 Scope
33-15-15-02 Reclassification

33-15-15-01. General provisions. Repealed effective February 1, 2005.

33-15-15-01.1. Purpose. The purpose of this chapter is to adopt by reference federal provisions for the prevention of significant deterioration program in North Dakota. The department will continue to implement the prevention of significant deterioration program as part of the state implementation plan.

History: Effective February 1, 2005.

General Authority: NDCC 23-25-03, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations Part 52, section 21, paragraphs (a)(2) through (fe), (h) through (r), ~~and (v) through (v), (w), (aa) and (bb)~~ as they exist on ~~October 1, 2003~~ August 1, 2007 are incorporated by reference into this chapter. This includes revisions to the rules that were effective by this date but had not been published in the Code of Federal Regulations yet. Any changes or additions to the provisions are listed below the affected paragraph.

For purposes of this chapter, administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties listed below, or any others that cannot be delegated, administrator means the administrator of the United States environmental protection agency:

(b)(17) - Definition of federally enforceable.

(b)(37)(I) - Definition of repowering.

(b)(42) - Definition of clean unit.

(b)(43) - Definition of prevention of significant deterioration.

- (b) (48) (ii) (c) - Definition of baseline actual emissions.
- (b) (50) (I) - Definition of regulated NSR pollutant.
- (1) (2) - Air quality models.
- (p) (2) - Consultation with the Federal land manager.
- (y) (4) (I) - First sentence only - Comparison to previous BACT and LAER determinations.

For purposes of this chapter, permit or approval to construct means a permit to construct. The procedures for obtaining a permit to construct are specified in section 33-15-14-02 and this chapter. Where there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term "40 CFR 52.21" is replaced with "this chapter".

40 CFR 52.21(b) (2) (a) The following is deleted:
Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section.

40 CFR 52.21(b) (3) (iii) (a) The words "the administrator or other reviewing authority" are replaced with "the department or the administrator of the U.S. environmental protection agency"

40 CFR 52.21(b) (14) The following is added:
 (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.

40 CFR 52.21(b) (15) The following is added:
 (iv) North Dakota is divided into two intrastate areas under section 107(d) (1) (D) or (E) of the Federal Clean Air Act [pub. L. 95-95]: the Cass County portion of Region No. 130, the Metropolitan Fargo-Moorhead Interstate Air Quality Control Region; and Region No. 172, the

North Dakota Intrastate Air Quality
Control Region (the remaining fifty-
two counties).

40 CFR 52.21(b) (22)

The following is added:

Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

40 CFR 52.21(b) (29)

The following is added:

This term does not include effects on integral vistas.

40 CFR 52.21(b) (30)

The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)."

40 CFR 52.21(b) (43)

The paragraph is deleted in its entirety and replaced with the following:

Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the U.S. environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.

40 CFR 52.21(b) (48) (ii)

The following words are deleted: "by the administrator for a permit required under this section or"

40 CFR 52.21(b) (51)

The paragraph is deleted in its entirety and replaced with the following:

Reviewing authority means the department.

40 CFR 52.21(b) (53)

This paragraph is deleted in its entirety and replaced with the following:

Lowest achievable emission rate (LAER) has the meaning given in 40 CFR

51.165(a)(1)(xiii) which is incorporated by reference.

40 CFR 52.21(b)(54)

This paragraph is deleted in its entirety and replaced with the following:

Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.

40 CFR 52.21(b)(58)

This paragraph is deleted in its entirety.

40 CFR 52.21(d)

The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed the ambient air quality standards in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States.

40 CFR 52.21(e)

The following is added:

(5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.

40 CFR 52.21(h)

The paragraph is deleted and replaced with the following:

The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.

40 CFR 52.21(i)(5)(ii)

In this paragraph the reference to paragraph (i)(8)(i) is replaced with (i)(5)(i).

40 CFR 52.21(i)

The following subparagraphs are added:

(11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply

to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.

- (12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

40 CFR 52.21(k)(1) This subparagraph is deleted and replaced with the following:

- (1) Any ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or

40 CFR 52.21(1)(1) This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix W of 40 CFR 51 ("guideline on air quality models" as it exists on ~~January 30, 2004~~ July 1, 2007) as supplemented by the "North Dakota guideline for air quality modeling analyses." These documents are incorporated by reference. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.

40 CFR 52.21(m)(3) "Appendix B to part 58 of this chapter" is replaced with 40 CFR 58, appendix B.

40 CFR 52.21(o)(1) The following is added:

The visibility analysis shall be prepared in accordance with chapter 33-15-19.

40 CFR 52.21(p)(6) "paragraph (q)(4)" is replaced with "paragraph (p)(4)" and "(q)(7)" is replaced with "(p)(7)"

40 CFR 52.21(p)(7) "paragraph (q)(7)" is replaced with "paragraph (p)(7)"

40 CFR 52.21(p)(8) "paragraphs (q)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)"

40 CFR 52.21(p) The following is added:

(9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.

40 CFR 52.21(q) This paragraph is deleted and replaced with the following:

gg. Public participation.

(1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.

(2) ~~Within one year after receipt of~~ respect to a completed application, the department shall:

(a) ~~M~~ Within one year after receipt, make a preliminary determination whether the

source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

- (b) Make available in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.
- (c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least 30 days for public comment.
- (d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.
- (e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in

the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required and other appropriate considerations.

- (f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than ~~ten~~ thirty days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department may extend the time to respond to comments based on a written request by the applicant. The department shall consider the applicant's response in making its final decision. All comments must be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.
- (g) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.
- (h) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

40 CFR 52.21(r) (6)

The word "reasonable" is deleted.

40 CFR 52.21(v) (1)

This subparagraph is deleted and replaced with the following:

- (1) An owner or operator of any proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

40 CFR 52.21(v) (2) (iv) (a)

This subitem is deleted and replaced with the following:

- (a) Cause or contribute to a violation of an applicable ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or

40 CFR 52.21(w) (1)

This subparagraph is deleted and replaced with the following:

- (1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

~~40 CFR 52.21(y) (3) (ii)~~

~~The item is deleted in its entirety and replaced with the following:~~

~~Impact of emissions from the unit. The department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard in chapter 33-15-02 in areas subject to regulation under this article or the national ambient air quality standards in all other areas of the~~

~~United States, will not cause or contribute to any violation of a PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.~~

~~40 CFR 52.21(y)(7) This paragraph is deleted in its entirety and replaced with the following:~~

~~Procedures for designating emission units as clean units. The department shall designate an emissions unit a clean unit only by issuing a permit under section 33-15-14-02. The public shall be provided notice of the permit and provided the opportunity for comment. The procedures for public notice and public comment shall be those in paragraph (q)(2) of this section.~~

~~40 CFR 52.21(z)(5) This paragraph is deleted in its entirety and replaced with the following:~~

~~Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in paragraphs (b)(32)(i) through (vi) of this section, the project must be approved by the department and recorded in a permit to construct under section 33-15-14-02. The department shall provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality effects analysis. The department shall provide at least a thirty day period for the public and the administrator of the environmental protection agency to submit comments. Public comment procedures must comply with the requirements of paragraph (q)(2) of this section. The department shall address all comments received by the end of the comment period before issuing the permit to construct.~~

40 CFR 52.21(aa)(15)

This paragraph is deleted in its entirety and replaced with the following:

- (i) The department shall not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this section after the administrator of the environmental protection agency has approved regulations incorporating these requirements into the state implementation plan.
- (ii) The department may supersede any PAL which was established prior to the date of approval of the state implementation plan by the administrator of the U.S. environmental protection agency with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

History: Effective February 1, 2005.

General Authority: NDCC 23-25-03, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-02. Reclassification.

1. **Reclassification of areas.** All areas (except as otherwise provided under 40 CFR 52.21(e)) must be designated either class I, class II, or class III. Any designation other than class II is subject to the redesignation procedures of this section. Redesignation (except as otherwise precluded by 40 CFR 52.21(e)) is subject to approval by the administrator of the United States environmental protection agency.

a. Reclassification by petition.

- (1) **Filing of petition.** After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county (except as precluded by 40 CFR 52.21(e)) to class I,

class II, or class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition for reclassification only if such reclassification is substantially supported by the hearing record.

(2) Contents of petition. The petition to reclassify any area to either class I, class II, or class III must contain a legal description of the area which the petition is to affect; an explanation of the meaning and purpose of the petition and reclassification; a statement to the effect that those persons signing the petition desire the described area to be reclassified to either class I, class II, or class III and such statement must specify which class; a list of those persons or person circulating such petition, which persons must be designated "Committee of Petitioners"; an affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated such petition and that each of the signatures to such petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated; all petitions' signatures must be numbered and dated by month, day, and year, and the name must be written with residence address and post-office address including the county of residence followed by state of North Dakota.

b. Reclassification upon department's own motion. At such time as the department may determine, it may hold a public hearing and take such other action as specified in subsection 2 in order to reclassify any area of this state (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III. The department shall reclassify the area proposed for reclassification only if such reclassification is substantially supported by the hearing record.

2. Procedures for reclassification.

a. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state,

including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to either class I or class II pursuant to subdivisions a and b of subsection 1, provided that:

- (1) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with the procedures established in subsection 3.
- (2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation are notified at least thirty days prior to the public hearing.
- (3) A discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation is prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion.
- (4) Prior to the issuance of notice respecting the redesignation of any area that includes any federal lands, the state shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty days) to confer with the state respecting the redesignation and to submit written comments and recommendations with respect to such redesignation. In redesignating any area with respect to which any federal land manager has submitted written comments and recommendations, the state shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager).
- (5) The proposed redesignation is based on the record of the state's hearing, which must reflect the basis for the proposed redesignation, including consideration of:

- (a) Growth anticipated in the area.
 - (b) The social, environmental, health, energy, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and states.
 - (c) Any impacts of such proposed redesignation upon regional or national interests. Anticipated growth shall include growth resulting both directly and indirectly from proposed development.
- (6) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.
- b. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands but excluding lands within the exterior boundaries of any Indian reservations, to class III if:
- (1) Such redesignation would meet the requirements of subdivision a.
 - (2) Such redesignation has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislative assembly if it is in session or with the leadership of the legislative assembly if it is not in session, and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation or pass resolutions concurring the state's redesignation.
 - (3) Such redesignation will not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area, or any applicable ambient air quality standard.
 - (4) Prior to any public hearing on redesignation of any area, there must be available, insofar as is practicable for public inspection, any

specific plans for any new major stationary source or major modification which may be permitted to be constructed and operated only if the area in question is redesignated as class III.

3. Reclassification hearings.

- a. Any hearing required by subsection 2 shall be held only after reasonable notice, which shall be considered to include, at least thirty days prior to the date of such hearing:
- (1) Notice given to the public by prominent advertisement in the region affected announcing the date, time, and place of such hearing.
 - (2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.
 - (3) Notification to the administrator of the United States environmental protection agency (through the appropriate regional office).
 - (4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply.
 - (5) In the case of an interstate region, notification to any other states included, in whole or in part, in the region.
 - (6) Notification to any states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation.
- b. The department shall prepare and retain for inspection a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.
- c. Any hearing held pursuant to the provisions of this subsection must be held only for the purpose of considering such reclassification as has been noticed under the provisions of subsection 2, and

consideration of reclassification to other classes not so noticed shall not be allowed.

d. Any hearing held pursuant to these provisions may be continued for such purposes and for such periods of time as the department may determine.

4. **Time limitation.** Notwithstanding any other regulation herein, the department shall rule upon any proposed reclassification within eighteen months of the official public notification of such proposed redesignation by the department.

History: Amended effective July 1, 1982; October 1, 1987; January 1, 1989; March 1, 1994; February 1, 2005.

General Authority: NDCC 23-25,03, 28-32-02

Law Implemented: NDCC 23-25-03

**CHAPTER 33-15-21
ACID RAIN PROGRAM**

Section	
33-15-21-01	General Provisions [Repealed]
33-15-21-02	Designated Representative [Repealed]
33-15-21-03	Acid Rain Applications [Repealed]
33-15-21-04	Acid Rain Compliance Plan and Compliance Options [Repealed]
33-15-21-05	Acid Rain Permit Contents [Repealed]
33-15-21-06	Acid Rain Permit Issuance Procedures
33-15-21-07	Permit Revisions [Repealed]
33-15-21-08	Compliance Certification [Repealed]
33-15-21-08.1	Permits
33-15-21-09	Continuous Emissions Monitoring
33-15-21-10	Acid Rain Nitrogen Oxides Emission Reduction Program
33-15-21-11	Sulfur Dioxide Opt-Ins [Reserved]

33-15-21-01. General provisions. Repealed effective June 1, 2001.

33-15-21-02. Designated representative. Repealed effective June 1, 2001.

33-15-21-03 Acid rain permit applications. Repealed effective June 1, 2001.

33-15-21-04. Acid rain compliance plan and compliance options. Repealed effective June 1, 2001.

33-15-21-05. Acid rain permit contents. Repealed effective June 1, 2001.

33-15-21-06. Acid rain permit issuance procedures. Repealed effective June 1, 2001.

33-15-21-07. Permit revisions. Repealed effective June 1, 2001.

33-15-21-08. Compliance certification. Repealed effective June 1, 2001.

33-15-21-08.1. Permits. The provisions of title 40, Code of Federal Regulations, part 72 and its appendices, as they exist on ~~January 31, 2006~~ March 1, 2008, for purposes of implementing an acid rain program that meets the requirements of title IV of the federal Clean Air Act, are incorporated into this chapter by reference. The term "administrator" means the department except for those duties that cannot be delegated to the department. For those duties that cannot be delegated, "administrator" means the administrator of the United States environmental protection agency. If the provisions or requirements of title 40, Code of Federal Regulations, part 72, conflict with or are not included in section 33-15-14-06, the provisions of part 72 shall apply and take precedence.

History: Effective June 1, 2001; amended effective March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-01-04.1

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-09. Continuous emissions monitoring.

- 1. General.** The monitoring, recordkeeping, and reporting of sulfur dioxide, nitrogen oxides, and carbon dioxide emissions, volumetric flow, and opacity data from affected units under the acid rain program shall be conducted in accordance with title 40, Code of Federal Regulations, part 75. Title 40, Code of Federal Regulations, part 75 and its appendices, as they exist on ~~January 31, 2006~~ March 1, 2008, are incorporated by reference.
- 2. Exceptions.** Those portions of title 40, Code of Federal Regulations, part 75, that are controlled and administered completely by the United States environmental protection agency will not be enforced by the state. This should not be construed as precluding the United States environmental protection agency from exercising its statutory authority under the Clean Air Act, as amended, or an affected source from complying

with the authority or the requirements of the federal acid rain program.

History: Effective December 1, 1994; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-10. Acid rain nitrogen oxides emission reduction program. Title 40, Code of Federal Regulations, part 76 and its appendices, as they exist on ~~January 31, 2006~~ March 1, 2008, are incorporated into this chapter by reference.

History: Effective April 1, 1998; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-01-04.1, 23-25-03

33-15-21-11. Sulfur dioxide opt-ins. [Reserved]

CHAPTER 33-15-22
EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
FOR SOURCE CATEGORIES

Section	
33-15-22-01	Scope
33-15-22-02	Definitions
33-15-22-03	Emissions Standards

33-15-22-01. Scope. The subparts and appendices of 40 Code of Federal Regulations, part 63 [40 CFR 63] as they exist on ~~January 31, 2006~~ March 1, 2008, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to an emissions standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective January 1, 1996; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-02. Definitions. For the purposes of this chapter:

"Administrator" means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the administrator of the United States environmental protection agency.

History: Effective December 1, 1994; amended effective February 1, 2005.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-22-03. Emissions standards.

Subpart A - General provisions

Subpart B - Requirements for control technology determinations for major sources in accordance with Federal Clean Air Act sections 112(g) and 112(j).

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list.

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emissions standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emissions standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emissions standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emissions standards for dry cleaning facilities.

Subpart N - National emissions standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emissions standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emissions standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emissions standards for halogenated solvent cleaning.

Appendix A to subpart T - Test of solvent cleaning procedures.

Appendix B to subpart T - General provisions applicability to subpart T.

Subpart CC - National emissions standards for hazardous air pollutants from petroleum refineries.

Subpart GG - National emissions standards for aerospace manufacturing and rework facilities.

Subpart HH - National emission standards for hazardous air pollutants from oil and natural gas production facilities.

* Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

Subpart JJ - National emissions standards for wood furniture manufacturing operations.

Subpart KK - National emissions standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Subpart OO - National emissions standards for tanks - Level 1.

Subpart PP - National emissions standards for containers.

Subpart QQ - National emissions standards for surface impoundments.

Subpart RR - National emissions standards for individual drain systems.

Subpart SS - National emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

Subpart TT - National emission standards for equipment leaks - control level 1.

Subpart UU - National emission standards for equipment leaks - control level 2 standards.

Subpart VV - National emissions standards for oil-water separators and organic water separators.

Subpart WW - National emission standards for storage vessels (tanks) - Control level 2.

Subpart YY - National emission standards for hazardous air pollutants for source categories: generic maximum achievable control technology standards.

Subpart HHH - National emission standards for hazardous air pollutants from natural gas transmission and storage facilities.

Subpart RRR - National emission standards for hazardous air pollutants for secondary aluminum production.

Table 1 to Subpart RRR - Emission standards for new and existing affected sources.

Table 2 to Subpart RRR - Summary of operating requirements for new and existing affected sources and emission units.

Table 3 to Subpart RRR - Summary of monitoring requirements for new and existing affected sources and emission units.

Appendix A to Subpart RRR - General provisions applicability to Subpart RRR.

Subpart UUU - National emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.

Subpart AAAA - National emission standards for hazardous air pollutants: municipal solid waste landfills.

Subpart CCCC - National emission standards for hazardous air pollutants: manufacturing of nutritional yeast.

Subpart FFFF - National emission standards for hazardous air pollutants: miscellaneous organic chemical manufacturing.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart MMMM - National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.

Subpart VVVV - National emission standards for hazardous air pollutants for boat manufacturing.

Subpart WWWW - National emissions standards for hazardous air pollutants: reinforced plastics composites production.

~~Subpart DDDDD - National emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters.~~

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

~~Subpart JJJJJ - National emission standards for hazardous air pollutants for brick and structural clay products manufacturing.~~

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

Appendix C to part 63 - Determination of the fraction biodegraded (F_{bio}) in a biological treatment unit.

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

Authority: 42 U.S.C. 7401 et seq.

History: Effective December 1, 1994; amended effective January 1, 1996; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

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CHAPTER 33-15-23
FEEES

Section	
33-15-23-01	Definitions
33-15-23-02	Permit to Construct Fees
33-15-23-03	Minor Source Permit to Operate Fees
33-15-23-04	Major Source Permit to Operate Fees
33-15-23-05	Phase I Substitution Units

33-15-23-01. Definitions. For purposes of this chapter:

1. "Major source" means any source that has been issued or is required by this article to obtain a title V permit to operate. This includes sources that have begun operation but have not yet applied for a title V permit to operate.
2. "Minor source" has the meaning given to it in section 33-15-14-01.1.
3. "Regulated contaminant" means any "regulated air contaminant", as defined in section 33-15-14-06, except the following:
 - a. Carbon monoxide.
 - b. Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.
 - c. Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

History: Effective August 1, 1995; amended effective February 1, 2005.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-23-02. Permit to construct fees. Any person constructing, installing, or establishing a new stationary source or altering an existing source which requires a permit to construct under subsections 1 and 3 of section 33-15-14-02 is required to pay

a permit to construct application filing fee and a permit to construct processing fee to the state department of health.

1. **Application fee.** A nonrefundable filing fee of one hundred fifty dollars must be submitted with the permit application.
2. **Processing fee.** The applicant shall pay a processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources which would involve a major analysis the cost of which would exceed one hundred fifty dollars as determined by the department. The following procedures and criteria will be utilized in establishing the fee:
 - a. A record of all permit to construct application processing costs incurred must be maintained by the department.
 - b. Upon request, the department, in consultation with the applicant, will prepare an estimate of the processing fee and the billing schedule that will be utilized in processing the application. If the applicant chooses, the applicant may withdraw the application at this point without paying any processing fees.
 - c. After final determinations on the application have been made, a final statement will be sent to the applicant containing the remaining actual processing costs incurred by the department.
 - d. The applicant must pay the processing fee regardless of whether a permit to construct is issued, denied, or withdrawn.
 - e. Any source that initiates operation under a permit to construct prior to receiving a permit to operate is subject to the fees outlined in section 33-15-23-03 or 33-15-23-04, whichever is applicable.

History: Effective August 1, 1995.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.2

33-15-23-03. Minor source permit to operate fees.

1. The owner or operator of each installation subject to a permit issued under section 33-15-14-03 shall pay an annual permit fee based on the following table:

Classification	Annual Fee (\$)
Designated	300
Monitor (CEMS or Ambient Site)	600/CEMS or site
Other	100
State <u>and local government</u>	0
Exempt	0

The following criteria are used to classify sources for determining minor source annual fees:

Designated: ~~A source that is designated for scheduled inspections and whose actual emissions of any air contaminant are less than one hundred tons per year and whose total annual emissions of all air contaminants would exceed one hundred tons [90.68 metric tons] per year if control equipment was not operated.~~

Monitor: A charge in addition to the annual fee for any source operating a continuous emission monitor system (CEMS) or an ambient monitoring site.

Other: As designated by the department.

State and local government: ~~Any state-owned installation owned by the state of North Dakota or a local government.~~

Exempt: As designated by the department.

2. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:
 - a. Observation of source or performance specification testing, or both.
 - b. Audits of source operated ambient air monitoring networks.

An accounting of the actual costs incurred under this subsection must accompany the notice of the annual permit fee.

3. Annual emissions are derived using representative source test data, "compilation of air pollution emission factors (AP-42)" or other reliable data.
4. The classification of "other" and "exempt" shall be designated by the department on a case-by-case basis.
5. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following receipt the date of such notice.

History: Effective August 1, 1995.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-04.2

33-15-23-04. Major source permit to operate fees.

1. The owner or operator of each installation that meets the applicability requirements of subsection 2 of section 33-15-14-06 shall pay an annual fee. The fee is determined by the actual annual emissions of regulated contaminants. Fugitive emissions will be included in the fee calculation for sources that are required to count them when determining applicability under section 33-15-14-06.
2. Effective January 1, 2005, the annual fee shall be assessed at a rate of twenty-five dollars per ton of emissions of each regulated contaminant identified in section 112(b) of the Federal Clean Air Act. All other regulated contaminants will be assessed a fee at a rate of twelve dollars per ton. The minimum fee will be five hundred dollars per source.
3. In determining the amount due, that portion of any regulated contaminant which is emitted in excess of four thousand tons [3628.74 metric tons] per year will be exempt from the fee calculation.
4. Each boiler with a heat input greater than two hundred fifty million British thermal units per hour will be assessed fees on an individual basis and independent of the fees associated with the rest of the installation. The four thousand ton [3628.74 metric ton] per year cap referenced in subsection 3 is applied to each boiler.
5. Any state-owned or local government-owned facility is exempt from the fee.

6. The fee calculation must be based upon actual annual emissions from the previous calendar year.
7. The fee must be calculated independently for each installation, facility, source, or unit which has been issued a separate permit to operate.
8. The fee rates and the limits established under subsection 2 may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-one of each calendar year.
9. Any source issued a general permit under section 33-15-14-06 is subject to the minor source permit to operate fees under section 33-15-23-03.
10. Any source that qualifies as a "small business" under section 507 of the Federal Clean Air Act may petition the department to reduce or exempt any fee required under this section. Sufficient documentation of the petitioner's financial status must be submitted with the request to allow the department to evaluate the request.
11. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following ~~receipt~~ the date of such notice.

History: Effective August 1, 1995; amended effective February 1, 2005; January 1, 2007.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.2

33-15-23-05. Phase I substitution units. Substitution units, as defined in 40 CFR part 72, shall pay an annual administrative fee equal to one hundred thousand dollars per source. This fee must be adjusted on an annual basis to account for any increase in the consumer price index. The adjustment shall be made on August thirty-one of each year and shall be based on the department of labor's published change in the index.

History: Effective August 1, 1995.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-04.2

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