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

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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. Drycleaning 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 source for which an applicable federal standard of performance [40 CFR 60] has been adopted in chapter 33-15-12.

10. Any source for which an applicable national emission standard for hazardous air pollutants [40 CFR 61] has been adopted in chapter 33-15-13.

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 cause or contribute to a violation of any state ambient air quality standard or violates 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 stationary 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; April 1, 2011.
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 onsite 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; amended effective 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.**

   a. 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.

   b. 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's or operator's own risk. These activities have no impact on the department's decision to issue a permit to construct. The initiation or completion of such activities conveys no rights to a permit to construct under this section.

   c. General permits. The department may issue a general permit to construct covering numerous similar sources which are not subject to permitting requirements under chapter 33-15-13 or 33-15-15 or subpart B of section 33-15-22-03. Any general permit shall

comply with all requirements applicable to other permits to construct and shall identify criteria by which sources may qualify for the general permit. A proposed general permit, any changes to a general permit, and any renewal of a general permit is subject to public comment. The public comment procedures under subsection 6 of section 33-15-14-02 shall be used. 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 permit to construct. Without repeating the public participation procedures under subsection 6 of section 33-15-14-02, the department may grant a source's request for authorization to construct under the general permit.

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 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 section 33-15-02-07 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 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 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 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 ($\mu g/m^3$)	24 ($\mu g/m^3$)	8 ($\mu g/m^3$)	3 ($\mu g/m^3$)	1 ($\mu g/m^3$)
SO_2	1.0	5		25	7.8
PM_{10}		5			
NO_2	1.0				7.5
CO			500		2000
$PM_{2.5}$	0.3	1.2			

   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;

         (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 or on the department's website, 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 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.

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

b. Fossil fuel burning 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, and 3 do not apply to engines that are a utility unit as defined in section 33-15-21-08.1.

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 metalworking.

(6) Diecasting 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 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 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; September 1, 1998; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; July 1, 2016.
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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.

d. Sources that are exempt from the requirement to obtain a permit to construct under subsection 13 of section 33-15-14-02 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 a of subsection 5 of section 33-15-14-03, 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 5 of section 33-15-14-03, 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 or on the department's website, 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) Provide notice 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 applicant's 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.** Every permit to operate issued by the department after February 9, 1976, must have a maximum term of five years. Applications for renewal of such permits must be submitted ninety days prior to the expiration date stated in the permit. 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.

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; April 1, 2011; July 1, 2016.
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 IV of the Federal Clean Air Act.

   d. "Alternative operating scenario (AOS)" means a scenario authorized in a title V permit that involves a change at the title V source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

   e. "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 States 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.

f. "Approved replicable methodology (ARM)" means title V permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this section, such that the protocol is based on sound scientific or mathematical principles, or both, and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the approved replicable methodology, or requirement of this section, including where an approved replicable methodology is used for determining applicability of a specific requirement to a particular change.

g. "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 CFR 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.

h. "Draft permit" means the version of a permit for which the department offers public participation or affected state review.

i. "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 preventive maintenance, careless or improper operation, or operator error.

j. "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.

k. "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.

l. "Environmental protection agency" or the "administrator" means the administrator of the United States environmental protection agency or the administrator's designee.

m. "Federal Clean Air Act" means the Federal Clean Air Act, as amended [42 U.S.C. 7401 et seq.].

n. "Final permit" means the version of a title V permit issued by the department that has completed all review procedures required in this section.

o. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

p. "General permit" means a title V permit to operate that meets the requirements of subdivision d of subsection 5.

q. "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 subject to regulation (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). For purposes of this definition, air contaminant subject to regulation does not include greenhouse gases as defined in title 40, Code of Federal Regulations, 86.1818-12(a). 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.

r. "Permit modification" means a revision to a title V permit that meets the requirements of subdivision e of subsection 6.

s. "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).

t. "Permit revision" means any permit modification or administrative permit amendment.

u. "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.

v. "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.

w. "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.

x. "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.

(4) Greenhouse gases.

y. "Renewal" means the process by which a permit is reissued at the end of its term.

z. "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 decisionmaking 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.

aa. "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.

bb. "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.

cc. "Subject to regulation" means, for any air contaminant, that the air contaminant is subject to either a provision in the Federal Clean Air Act, or a nationally applicable regulation codified by the administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I, subchapter C, that requires actual control of the quantity of emissions of that air contaminant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that air contaminant release from the regulated activity.

dd. "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.

ee. "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 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 source 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 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 information 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]

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 or contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including those associated with any proposed alternative operating 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 and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tons per year can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine or assure compliance with, or both, an applicable requirement.

(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) Additional information as determined to be necessary by the department to define proposed alternative operating scenarios identified by the source pursuant to paragraph 9 of subdivision a of subsection 5 of section 33-15-14-06 or to define permit terms and conditions implementing any alternative operating scenario under paragraph 9 of subdivision a of subsection 5 of section 33-15-14-06 or implementing paragraph 2 of subdivision b of subsection 6 of section 33-15-14-06, paragraph 3 of subdivision b of subsection 6 of section 33-15-14-06, paragraph 8 of subdivision a of subsection 5 of section 33-15-14-06, or paragraph 10 of subdivision a of subsection 5 of section 33-15-14-06. The permit application shall include documentation demonstrating that the source has obtained all authorizations required under the applicable requirements relevant to any proposed alternative operating scenarios, or a certification that the source has submitted all relevant materials to the department for obtaining such authorizations.

(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.

[4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(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.

[4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement 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 will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(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) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include approved replicable methodologies identified by the source in its title V permit application as approved by the department, provided that no approved replicable methodology shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this section or circumvent any applicable requirement that would apply as a result of implementing the approved replicable methodology.

(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 emissions 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. For all sources, the term of the permit may not exceed five years. The permit expires on the date listed on the permit.

(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 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 dates 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 alternative 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 alternative operating scenario under which it is operating;

(b) Shall extend the permit shield described in subdivision f to all terms and conditions under each such alternative 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. The department shall not approve a proposed alternative operating scenario into the title V permit until the source has obtained all authorizations required under any applicable requirement relevant to that alternative operating scenario.

(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 emissions 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. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information;

[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. 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 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 emissions 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 preventive 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 emissions 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 emissions 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 emissions limitations were exceeded due to the emergency. This notice fulfills the requirement of item 2 of subparagraph c of paragraph 3 of subdivision a. 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 permit 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 the 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 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 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. 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 emissions 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 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 e; 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 e 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 data base 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 of 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 require 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 paragraphs 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's objection. If the department has issued a permit prior to receipt of the United States environmental protection agency's 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 one hundred eighty 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, title 40, Code of Federal Regulations, part 64 compliance assurance monitoring, as it exists on July 2, 2010, 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; September 1, 1998; March 1, 2003; February 1, 2005; April 1, 2011; January 1, 2013; July 1, 2016.
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 [946.25 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 the business 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. 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 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