

**ARTICLE 33.1-04  
ENVIRONMENTAL RESTORATION**

Chapter	
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**CHAPTER 33.1-04-01  
GENERAL PROVISIONS**

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**33.1-04-01-01. Scope.**

Nothing in this article is intended to limit the department from using the fund for any purpose consistent with North Dakota Century Code chapter 23.1-10, even if such purpose is not addressed in these rules.

**History:** Effective January 1, 2023.

**General Authority:** NDCC 23.1-10-03

**Law Implemented:** NDCC 23.1-10-02, 23.1-10-03

**33.1-04-01-02. Definitions.**

The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23.1-10, except:

1. "Applicant" means any person seeking, by site, the use of environmental quality restoration fund moneys or seeking department approval of a voluntary response action plan under North Dakota Century Code section 23.1-10-15.
2. "Approvable action" means any action for which the director may approve the use of environmental quality restoration fund moneys.
3. "Contaminant of concern" refers to the regulated substance leading to a site's contamination.
4. "Contaminant source" means a containment unit, process, or any activity which contributed to, solely or in part, a release of a regulated substance to the environment.
5. "Delisted site" means any site removed from the North Dakota environmental priorities list.
6. "Director" means the North Dakota department of environmental quality director, or their designated representative.
7. "Environmental hazard" means any condition existing at a site that may represent a hazard to human or environmental health.
8. "Listed site" means any property included in the North Dakota environmental priorities list.

9. "North Dakota environmental priorities list" means a list of contaminated sites that the department has determined may be subject to department response using the environmental quality restoration fund.
10. "Priority" means a qualitative ranking of a listed site.
11. "Recognized environmental condition" means the presence, or likely presence, of any regulated substances in, on, or at a property due to a release to the environment; conditions indicative of a release to the environment; or under conditions that pose a threat of a future release to the environment.
12. "Subject property" means any property that is the subject of any remedial action, restoration, assessment, corrective action, mitigation, or monitoring, being conducted with environmental quality restoration fund moneys or under voluntary response action conditions.
13. "Unlisted site" means any site that has not been added to the North Dakota environmental priorities list.

**History:** Effective January 1, 2023.

**General Authority:** NDCC 23.1-10-03

**Law Implemented:** NDCC 23.1-10-02, 23.1-10-03

### **33.1-04-01-03. Actions approvable for funding.**

The director shall approve any use of moneys from the environmental quality restoration fund. Approvable actions include:

1. **Assessment.** Assessment activities gather information about current conditions at a site.
2. **Abatement.** Abatement activities are conducted to reduce or remove environmental hazards at a subject site. Abatement activities may or may not remove all environmental hazards or contaminant sources. Disposal of waste materials is included in this action.
3. **Contaminant source removal.** Contaminant source removal involves the removal and disposal of a contaminant source. This may or may not remove all environmental hazards. Contaminant source removal is not likely to address existing contamination.
4. **Emergency remedial efforts.** Emergency remedial efforts are activities taken to address imminent danger or the threat of imminent danger.
5. **Institutional controls.** Institutional controls may be engineered systems, such as vapor mitigation systems, land use requirements through zoning or environmental covenants, or binding legal agreements that reduce the risk of human or environmental health being negatively impacted by contamination at a subject property.
6. **Mitigation.** Mitigation involves activities to avoid, reduce, or minimize environmental damage resulting from a release. These activities may be taken at the subject property or another property.
7. **Monitoring.** Monitoring involves collecting environmental data at a site over a period of time. Monitoring may be conducted to determine the effectiveness of remedial efforts, the effectiveness of institutional controls, and other activities. Monitoring activities may be conducted jointly, or in addition to, remediation or monitoring activities of responsible parties.
8. **Remediation.** Remediation involves all activities conducted to reduce, remove, or repair environmental contamination at a subject property. Disposal of contaminated media is included in this action.

**History:** Effective January 1, 2023.

**General Authority:** NDCC 23.1-10-03

**Law Implemented:** NDCC 23.1-10-02, 23.1-10-03

**33.1-04-01-04. Use of fund for actions at contaminated sites.**

Chapter 33.1-04-02 contains the procedures for using environmental quality restoration fund moneys at sites on the North Dakota environmental priorities list. Generally, at contaminated or potentially contaminated sites not on the North Dakota environmental priorities list, the department only may use environmental quality restoration fund moneys to fund emergency remedial actions or investigative activities to determine whether listing is appropriate.

**History:** Effective January 1, 2023.

**General Authority:** NDCC 23.1-10-03

**Law Implemented:** NDCC 23.1-10-02, 23.1-10-03

**33.1-04-01-05. Use of fund for mitigation activities.**

The department may use the fund for activities to mitigate environmental damage at the location of the release or at another appropriate location where the department determines that harm caused by the release necessitates mitigation. Mitigation locations are not included on the North Dakota environmental priorities list.

**History:** Effective January 1, 2023.

**General Authority:** NDCC 23.1-10-03

**Law Implemented:** NDCC 23.1-10-02, 23.1-10-03

**33.1-04-01-06. Cost recovery.**

The department reserves the right to conduct cost recovery activities in accordance with North Dakota Century Code section 23.1-10-12, where appropriate. Nothing in this article is intended to limit the department's ability to recover costs.

**History:** Effective January 1, 2023.

**General Authority:** NDCC 23.1-10-03

**Law Implemented:** NDCC 23.1-10-02, 23.1-10-03

**33.1-04-01-07. Identifying responsible parties.**

The department shall undertake reasonable efforts to identify responsible parties for subject properties, including examining property records, reviewing historical spill information and other documents, conducting site investigations and sampling, and requesting information from relevant persons. A person that acquires property may show that they made "all appropriate inquiries into the previous ownership" under North Dakota Century Code section 23.1-10-08 by providing documentation that they followed the process for assessing the environmental conditions of a property presented in the United States environmental protection agency's All Appropriate Inquiries Final Rule, 40 C.F.R. Part 312, or ASTM International's Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E 1527-13).

**History:** Effective January 1, 2023.

**General Authority:** NDCC 23.1-10-03

**Law Implemented:** NDCC 23.1-10-02, 23.1-10-03, 23.1-10-08