

**CHAPTER 33.1-04-02  
NORTH DAKOTA ENVIRONMENTAL PRIORITIES LIST**

Section

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**33.1-04-02-01. Purpose.**

This chapter contains the procedures the department will generally follow when determining whether to list or delist a site. Such decisions are wholly within the department's discretion and do not convey any legal right or interest to any person.

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

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

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

**33.1-04-02-02. Eligibility.**

The department may add a site to the North Dakota environmental priorities list on its own initiative or upon application from a person that is not a responsible person for the site. In determining whether to add a site to the North Dakota environmental priorities list, the department will consider the following criteria:

1. The contaminant of concern at the subject property should be identified. If no contaminant of concern has been identified, there should be at least one recognized environmental condition documented at the site.
2. The subject property must be assessed by the department to determine if the site conditions support the listing of the site, and to determine the priority of the listed site.
3. The subject property may not be eligible for, or should have exhausted, any other state or federal funding sources. Private funding sources may still be available.
4. The responsible party must be identified, if possible.
5. Any other information the department deems relevant.

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

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

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

**33.1-04-02-03. Adding sites to the North Dakota environmental priorities list.**

1. The department may add eligible sites to the North Dakota environmental priorities list on a case-by-case basis.
2. The department shall complete a priority determination for a listed site. Sites that the department determines have a higher potential for environmental harm generally must be given higher priority for corrective action by the department, though the department may consider other factors such as local priorities.

3. The inclusion of a site on the North Dakota environmental priorities list does not guarantee any funding or corrective action will be completed.
4. The department will post on its website the North Dakota environmental priorities list and any revisions to the list. When a new site is listed, the department will post on its website an eligibility determination, priority determination, and site summary. The site summary must include:
  - a. The county in which the site is located;
  - b. The nearest incorporated city;
  - c. The name of the applicant, if applicable; and
  - d. Contact information, including the name, phone number, mailing address, and electronic mail address of the applicant point of contact, if applicable.

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

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

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

#### **33.1-04-02-04. Delisting sites.**

The department may remove sites from the North Dakota environmental priorities list based on new information or revision of department priorities. Delisting does not relieve any person liable from the responsibility to complete corrective action or from compliance with any environmental law.

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

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

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

#### **33.1-04-02-05. Actions at listed sites.**

The environmental quality restoration fund may be used to fund approvable actions at listed sites. The department has discretion to determine the amount of funding that will be used at a site and types of approvable actions that will be funded. The department may seek cost recovery from responsible parties. Listed sites will be addressed according to the site's ranking on the North Dakota environmental priorities list, but the department reserves the right at any time to:

1. Modify the order of processing, payment, and approval of activities; or
2. Modify the ranking of sites based on new information or revision of department priorities.

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

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

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

#### **33.1-04-02-06. Cost-sharing agreements.**

The department may enter into a cost-sharing agreement with an owner of a listed site that is not a responsible party. Cost-sharing agreements involve the site owner conducting department-approved activities and receiving partial reimbursement from the department for the costs of those approved activities.

1. **Eligibility.** The following criteria must be met for a site owner to be eligible for a cost-sharing agreement:
  - a. The cost-sharing activities are approvable actions;

- b. The listed site owner has prepared a voluntary response action plan meeting the requirements of North Dakota Century Code section 23.1-10-15;
  - c. The department and listed site owner have entered into a voluntary cleanup agreement under North Dakota Century Code section 23.1-10-15;
  - d. The approvable actions will be conducted in accordance with the voluntary response action plan; and
  - e. The department has no open enforcement actions involving the site owner or an entity controlled by the site owner.
2. **Agreement.** The department and a site owner may enter into a cost-sharing agreement if the eligibility requirements of subsection 1 are met. The cost-sharing agreement must include:
- a. A description of the approvable actions planned for the site;
  - b. A cost-estimate for the approvable actions;
  - c. Statement of maximum department contribution amount, not to exceed fifty percent of the total real cost of the approvable actions;
  - d. Any terms or conditions required by the department to enter into the agreement; and
  - e. A certificate of completion for the voluntary response actions issued to the listed site owner within an approved timeline.
3. **Violation of cost-sharing requirements.** The site owner shall repay cost-share funds to the department if:
- a. Response actions have been conducted in a way or manner that is not in compliance with the voluntary response action plan;
  - b. The site owner has failed to comply with, or violated, the voluntary cleanup agreement;
  - c. The site owner fails to comply with the terms and conditions of the cost-sharing agreement;
  - d. The site owner's remedial actions cause, or contribute to, additional contamination of the listed property; or
  - e. The site owner's remedial actions cause, or contribute to, contamination at properties other than the subject property.

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

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

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