CHAPTER 33.1-20-01.1
GENERAL PROVISIONS

33.1-20-01.1-01. Purpose.

It is the purpose of this article to provide performance criteria and standards for the management of solid waste in a manner that will control nuisance and litter, protect the public health, safety, and welfare, and prevent or minimize injury of environmental resources from exposure to solid waste or constituents of solid waste.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-02. Applicability.

Any person who operates or proposes to operate any type of solid waste management system, unit, or facility and any person who transports solid waste, is subject to the provisions of this article.

This article does not apply to the following:

1. The management of hazardous waste at hazardous waste management units or facilities as defined by chapter 33.1-24-01;

2. Solid waste management units which do not receive solid waste after October 9, 1993, except closure standards apply;

3. Recycled agricultural material;

4. The disposal of household waste generated by any individual who resides on unplatted land in unincorporated areas of this state, on that person's property, unless handling of this waste is not in keeping with the purpose of this article;

5. The beneficial use or reuse of materials, substances, energy, or other products derived from a resource recovery activity;

6. Additional exemptions of certain requirements as specified in provisions of this article; or

7. Agricultural waste from a farming operation that is disposed on land owned by the farming operation and which is not likely to pollute the waters of the state.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 23.1-08-09, 23.1-08-22; S.L. 2017, ch. 199, § 23

33.1-20-01.1-03. Definitions.

The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23.1-08, except:

1. "Acre foot" means the volume of one acre [0.40 hectares] of surface area to a depth of one foot [30.5 centimeters].

2. "Agricultural processing operation" means a facility that processes crops, livestock, or other agricultural products in preparation for wholesale or retail sale to the public such as meat packing, the milling of grain, the selling of livestock by licensed livestock auction facilities, or other similar activities.

3. "Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.

4. "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

5. "Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.

6. "Area-capacity curves" means graphic curves that readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

7. "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the solid waste management unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

8. "Beneficial use" means use of a solid waste or residual either in a manufacturing process to make a product or as a substitute for a raw material or product provided such use of the solid waste does not adversely impact human health or the environment. Beneficial use of CCR must meet the conditions in subdivisions a through d and beneficial use of other solid wastes or residuals must meet conditions in subdivisions a through c.

    a. The solid waste or residual must provide a functional benefit;

    b. The solid waste or residual must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

    c. The use of the solid waste or residual must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the solid waste or residual is not used in excess quantities; and

d. When unencapsulated use of CCR or residual involving placement on the land of twelve thousand four hundred tons or more in nonroadway applications, the user shall demonstrate and keep records, and provide such documentation upon request, that environmental releases to ground water, surface water, soil and air are comparable to or lower than those from analogous products made without solid waste or residual, or that environmental releases to ground water, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

9. "Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste for which closure is complete.

10. "Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water control structures, installing gas control systems, and measures necessary to secure the site.

11. "Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. Coal combustion residuals is a subset of special waste.

12. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities exclusive of household waste, industrial waste, and special waste.

13. "Compliance boundary" means the vertical planar surface that extends downward into the uppermost aquifer and that circumscribes the waste management units at which water quality standards or maximum concentration limits apply.

14. "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

15. "Contouring" means the placement of material to provide a continuous downward slope on the surface of a drainage area, except for erosion control features (e.g., swales, contour banks).

16. "Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "rolloffs").

17. "Dike" means an embankment, berm, or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids, or other materials.

18. "Displacement" means the relative movement of any two sides of a fault measured in any direction.

19. "Downstream toe" means the junction of the downstream slope or face of the surface impoundment with the ground surface.

20. "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading, and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive solid waste from off-site.

21. "Encapsulated beneficial use" means a beneficial use of solid waste that binds the solid waste into a solid matrix that minimizes its mobilization into the surrounding environment.

22. "Engineered slope protection measures" means nonvegetative cover systems, which include rock riprap, concrete revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

23. "Existing unit" means a landfill or surface impoundment or a portion thereof that is receiving or has received solid waste for which closure has not been completed.

24. "Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.

25. "Factor of safety (safety factor)" means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

26. "Farming operation" means the production or raising of crops or livestock. Production or raising of crops or livestock includes the following:

    a. Cultivating, growing, or harvesting agricultural crops;

    b. Breeding, feeding, grazing, or finishing of livestock; or

    c. Raising or producing poultry or unprocessed poultry products, unprocessed milk or dairy products, unprocessed livestock products such as wool, or unprocessed fruits, vegetables, or other horticultural products.

    The term "farming operation" includes any animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03.1 that recycles or applies its manure and other residual agricultural material to soils as recycled agricultural material, but does not include an animal feeding operation that generates manure or other residual agricultural material that is discarded as agricultural waste. The term "farming operation" does not include any processing of crops, livestock, or other agricultural products by an agricultural processing operation.

27. "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

28. "Final cover" means any combination of compacted or uncompacted earthen material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.

29. "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by an one hundred-year flood.

30. "Flood hydrograph" means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

31. "Freeboard" means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

32. "Free liquid" means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The environmental protection agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.

33. "Fugitive dust" means solid airborne particulate matter that contains or is derived from solid waste, emitted from any source other than a stack or chimney.

34. "Garbage" means putrescible solid waste such as animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, and processing plants.

35. "Gas condensate" means the liquid generated as a result of gas recovery processes at a landfill disposal unit.

36. "General permit" means a regional or statewide permit issued by the department for a specified category of beneficial use, processing or treatment of solid waste, the terms and conditions of which allow a person to operate under the permit if the terms and conditions of the permit and requirements of this article are met.

37. "Grassy vegetation" means vegetation that creates a continuous dense cover that prevents erosion and deterioration of the surface of the slope or pertinent surrounding areas, thereby preventing deterioration of the surface and develops shallow roots that do not penetrate the slopes or pertinent surrounding areas of the solid waste unit to a substantial depth and do not introduce the potential of internal erosion or risk of uprooting.

38. "Ground water" means water below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure. This definition does not apply to the regulation of CCR.

39. "Hazardous waste" has the meaning given by North Dakota Century Code section 23.1-04-02 and further defined in North Dakota Administrative Code chapter 33.1-24-02.

40. "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at eleven thousand seven hundred years before present, to present.

41. "Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.

42. "Hydraulic conductivity" means the rate at which water can move through a permeable medium (i.e., the coefficient of permeability).

43. "Incinerator" has the meaning given by section 33.1-15-01-04.

44. "Incised surface impoundment" means a surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of solid waste entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

45. "Industrial waste" has the same meaning as in North Dakota Century Code section 23.1-08-02. Such waste may include residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; textile manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.

46. "Inert waste" means nonputrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes: construction and demolition material such as metal, wood, bricks, masonry and

cement concrete; asphalt concrete; metal; tree branches; bottom ash from coal-fired boilers that is not CCR; and waste coal fines from air pollution control equipment.

47. "Inflow design flood" means the flood hydrograph that is used in the design or modification of the surface impoundments and its appurtenant works.

48. "Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the surface soil to alter the physical, chemical, and biological properties of the waste.

49. "Landfill" has the meaning given by North Dakota Century Code section 23.1-08-02 and that is not a land treatment unit, surface impoundment, injection well, or waste pile.

50. "Lateral expansion" means a horizontal extension of the waste boundaries of an existing solid waste disposal unit. This applies to an existing CCR landfill or existing CCR surface impoundment for lateral expansions made after October 19, 2015.

51. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

52. "Leachate removal system" means any combination of landfill base slopes, liners, permeable zones, pipes, detection systems, sumps, pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.

53. "Liquefaction factor of safety" means the factor of safety (safety factor) determined using analysis under liquefaction conditions.

54. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include manmade materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

55. "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees Celsius [77 degrees Fahrenheit].

56. "Municipal waste incinerator ash" means the residue produced by the incineration or gasification of municipal waste.

57. "Nutrient management plan" means a plan prepared by any animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03, or by any agricultural processing operation. This plan must be submitted to the department for approval and describe the method and schedule by which the recycled agricultural materials generated or stored by the operation are recycled or applied to the land at appropriate agronomic rates as nutrients or fertilizers, rather than discarded as agricultural waste. An approved nutrient management plan must address water pollution, odor, and other environmental and public health problems that are relevant because of size, location, or other environmental factors, and may include the following elements:

    a. Recycled agricultural material handling and storage, including construction and maintenance of buildings, feedlots, collection systems, storage systems with adequate storage and integrity, and diversion of runoff and flowing surface water from contact with the storage systems and the recycled agricultural material;

    b. Land application of recycled agricultural material, including soils testing, transportation, timing and methods of application, and nutrient management;

c. Conservation management practices, including injection or tillage of the recycled agricultural materials into the soils, crop residue and pasture management practices, use of conservation buffers, and other conservation practices that prevent water pollution from land application of recycled agricultural materials;

d. Recordkeeping and submittal of an annual report to the department by March first of each year, including the place, date, and amount of recycled agricultural material applied per acre, plus records of any testing;

e. Feed management; and

f. Other utilization options where residual agricultural materials are recycled.

58. "Operator" means the person responsible for the overall operation of a facility or part of a facility.

59. "Owner" means the person who owns a facility or part of a facility.

60. "Pilot project" means a restricted solid waste operation at an existing or new facility where the specific purpose is to demonstrate or test new and innovative methods of treating, handling, or beneficially using solid waste materials or investigate an alternative solid waste feedstock for a previously recognized beneficial use.

61. "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

62. "Postclosure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform postclosure activities.

63. "Probable maximum flood" means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

64. "Processing" means an operation designed to separate, shred, compress, or otherwise modify a recyclable material to facilitate the transport or resource recovery of the material.

65. "Qualified environmental professional" means a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases to the environment. Such a person must:

a. Be licensed or certified by a nationally recognized accreditation program (contingent upon prior approval by the department) and have the equivalent of three years of full-time relevant experience; or

b. Have a baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five years of full-time relevant experience.

66. "Qualified professional engineer" means a professional engineer, as defined in subsection 10 of North Dakota Century Code section 43-19.1-02, who is qualified by education, technical knowledge, and experience to make the specific technical certifications required under this article. Professional engineers making these certifications must be currently licensed in the state of North Dakota.

67. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33.1-10.

68. "Recognized and generally accepted good engineering practices" means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

69. "Recyclable material" means a solid waste material that has been segregated for recycling or converted into a raw material, substitute for a raw material, or a commodity.

70. "Recycled agricultural material" means agricultural waste generated by a farming operation or agricultural processing operation that is recycled or applied to soils as a nutrient or as a fertilizer at appropriate agronomic rates, or that is left in place on soils during harvesting, grazing, or other similar agricultural activities. Recycled agricultural materials also include:

    a. Material, including manure, generated by any animal feeding operation regulated under North Dakota Century Code chapter 61-28 or North Dakota Administrative Code chapter 33.1-16-03 that is stored in a feedlot or waste storage structure, provided that the material is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan; or

    b. Material, including manure, generated by any agricultural processing operation that is stored in a manner that is not likely to pollute the waters of the state, and recycled or applied to soils as nutrients or fertilizers in accordance with an approved nutrient management plan.

    Recycled agricultural material does not include agricultural waste that is discarded as garbage, refuse, or other solid waste.

71. "Recycling" means collecting, sorting, or recovering material that would otherwise be solid waste and performing all or part of a method or technique, including processing, to create a recyclable material.

72. "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon and ground water) which can be expected to exhibit the average properties of the universe or whole.

73. "Runoff" means any snowmelt, rainwater, leachate, or other liquid that drains from any part of a facility over another part of the facility or over land adjoining the facility.

74. "Run-on" means any snowmelt, rainwater, or other liquid that drains from land adjoining a facility onto any part of the facility or that drains from one part of the facility onto another part of the facility.

75. "Sand and gravel pit or quarry" means an excavation for the extraction of aggregate, minerals, or metals. The term sand and gravel pit or quarry does not include subsurface or surface coal mines.

76. "Scavenging" means uncontrolled removal of solid waste materials from any solid waste management facility.

77. "Sequential partial closure" means bringing discrete, usually adjacent, portions of a disposal facility to elevation and grade in an orderly, continually progressing process as part of the operations of the facility for facilitating closure.

78. "Sludge" means solid waste in a semisolid form consisting of a mixture of solids and water, oils, or other liquids.

79. "Solid waste management unit" means any discernible unit at which solid wastes have been placed at any time, for the management of solid waste, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A solid waste management unit may consist of multiple components that serve the same function within a facility, such as multiple surface impoundments or waste holding tanks.

80. "Static factor of safety" means the factor of safety (safety factor) determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

81. "Structural components" means liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood controls systems, and any other component used in the construction and operation of the solid waste management unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

82. "Suitable plant growth material" means that soil material (normally the A and the upper portion of B horizons which are dark colored due to organic staining) which, based upon a soil survey, is acceptable as a medium for plant growth when respread on the surface of regraded areas.

83. "Surface impoundment" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of leachate, solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal.

84. "Technologically enhanced naturally occurring radioactive material (TENORM)" means naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices. TENORM does not include background radiation or the natural radioactivity of rocks or soils. TENORM does not include "source material" and "byproduct material" as both are defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.] and relevant regulations implemented by the United States nuclear regulatory commission.

85. "Transfer station" means a site or building used to transfer solid waste from a vehicle or a container, such as a rolloff box, into another vehicle or container for transport to another facility.

86. "Treatment" means a method or process designed to change the physical, chemical, or biological character or composition of a solid waste or leachate so as to neutralize the waste or leachate or so as to render the waste or leachate safer for public health or environmental resources during transport, storage, beneficial reuse, or disposal. The term does not include resource recovery.

87. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the solid waste management unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.

88. "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

89. "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

90. "Vegetative height" means the linear distance between the ground surface where the vegetation penetrates the ground surface and the outermost growth point of the vegetation.

91. "Waste boundary" means a vertical surface located at the hydraulically downgradient limit of the solid waste management unit. The vertical surface extends down into the uppermost aquifer.

92. "Waste pile or pile" means any noncontainerized accumulation of nonflowing solid waste.

93. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

94. "Woody vegetation" means vegetation that develops woody trunks, root balls, or root systems that can penetrate the slopes or pertinent surrounding areas of the solid waste unit to a substantial depth and introduce the potential of internal erosion or risk of uprooting.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03, 61-28-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03, 61-28-04; S.L. 2017, ch. 199, § 23

33.1-20-01.1-04. Care and disposal of solid waste.

1. Any person who owns or operates any premises, business establishment, or industry is responsible for the solid waste management activities, such as storage, transportation, resource recovery, or disposal, of solid waste generated or managed at that person's premises, business establishment, or industry.

2. No solid waste may be delivered to a facility which is not in compliance with this article or abandoned upon any street, alley, highway, public place, or private premises.

3. Solid waste must be stored, collected, and transported in a manner that provides for public safety, prevents uncontrolled introduction into the environment, and minimizes harborage for insects, rats, or other vermin.

4. Except in unincorporated areas of this state, household waste must be removed from the premises or containers at regular intervals not to exceed seven days and transported to a solid waste management unit or facility.

5. Used oil, lead-acid batteries, major appliances, wind turbine blades, and scrap metal may not be collected or transported for disposal to any solid waste disposal unit or facility unless such unit or facility has provision for intermediate storage and recycling of these materials and all such materials are appropriately segregated for recycling.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-04.1. Storage containers and areas.

All household wastes are to be stored in the manner provided by this section.

1. **Storage containers.**

   a. Single-use containers.

(1) Single-use containers, such as paper or plastic bags, liners, or cartons, must have a maximum capacity of thirty-two gallons [121.1 liters] unless otherwise allowed by the local unit of government, must be leakproof and must be puncture resistant. Paper bags must be specifically designed for solid waste containment or disposal.

(2) Paper containers may not be used for outside storage unless supported by wall-mounted or freestanding holders or frames. When filled, the container top must be tied, stapled, or crimped to completely confine the contents.

b. Residential containers.

(1) Reusable residential containers must be rigid and durable, nonabsorbent, watertight, tapered, corrosion resistant, rodentproof, easily cleanable, and have a flytight cover. These containers must be covered except when adding or removing waste.

(2) Residential containers must have a maximum capacity of thirty-two gallons [121.1 liters] if collected manually. Residential containers used with automated collection vehicles may be larger than thirty-two gallons [121.1 liters].

(3) When residential containers are kept in the outdoor environment, storage racks or supports must be provided to minimize corrosion, to prevent breeding of insects, and to prevent rodent harborage. The bottom of the racks or supports must be at least one foot [30.5 centimeters] above ground level. The covers may be chained to the rack or to a permanent structure.

c. Bulk containers. Bulk containers or detachable containers, such as dumpsters, must be constructed of rigid and durable, rust-resistant and corrosion-resistant material, be equipped with tight-fitting lids or doors to prevent entrance of insects or rodents, and must be leakproof. Lids and covers must be closed except when adding or removing waste.

2. **Enclosed storage areas.**

a. Storage rooms, buildings, or areas must be of rodentproof construction which is readily cleanable with proper drainage.

b. Storage rooms or buildings, if not refrigerated, must be adequately vented and all openings must be screened.

3. **Maintenance of containers and enclosed storage areas.**

a. All containers and enclosed areas for storage of solid waste must be maintained in good repair and in a manner as necessary to prevent litter, nuisances, odors, insect breeding, and rodents.

b. Containers that are broken or otherwise fail to meet requirements of this section must be replaced with complying containers.

4. **Unconfined waste.** Unless special service or special equipment is provided by the collector for handling unconfined waste materials such as trash, brush, leaves, tree cuttings, newspapers and magazines, and other debris for manual pickup and collection, these materials must be in securely tied bundles or in boxes, bags, or other receptacles and solid waste so bundled may not exceed fifty pounds [22.7 kilograms] in weight and four feet [1.8 meters] in length. Such wastes may not be placed out for collection twenty-four hours before scheduled pickup.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-05. Collection and transportation vehicles.

1. Vehicles used for the commercial collection and transportation of any residue, sludge, agricultural, inert, industrial waste, or special waste must be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom. Where spillage does occur, the collector or transporter shall immediately return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area.

2. Vehicles used for the commercial collection and transportation of regulated infectious waste, household waste, or municipal waste incinerator ash must be fully leakproof and fully enclosed or covered to prevent scattering of material. Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit. Where spillage does occur, the collector or transporter shall immediately return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area.

3. The cargo-carrying body of a vehicle used for commercial collection or transportation of solid waste must be maintained in good repair and in sanitary condition.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-06. Hazardous waste.

The management of hazardous waste is regulated under article 33.1-24, except as otherwise provided in this article and section.

1. Containers having hazardous waste in excess of normal household quantities, which are not managed under article 33.1-24, must be marked to designate the content as toxic, explosive, or otherwise hazardous in a manner designed to give adequate warning to any person conducting the collection, transport, resource recovery, or disposal of the waste.

2. Every person who transports hazardous waste shall have a valid solid waste transporters permit, unless exempted by section 33.1-20-02.1-01.

3. Owners and operators of disposal, resource recovery, or solid waste processing facilities knowingly may not store, treat, handle, or dispose of hazardous waste in amounts that are in excess of quantities normally in household waste, unless the requirements of article 33.1-24 are met.

History: Effective January 1, 2019; amended effective October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-07. Pesticide waste.

Every person who handles surplus agricultural pesticides and pesticide containers shall comply with this article, section 33.1-15-10-02, and North Dakota Century Code section 4.1-33-17. Surplus pesticides may not be discarded in any manner which endangers humans, animals, and the environment. Pesticide containers must be drained empty according to label directions and power or triple rinsed before processing or disposal.

History: Effective January 1, 2019.

General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-08. Asbestos waste.

Every person who handles and disposes of asbestos waste shall comply with section 33.1-15-13-02 and this article.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-09. Radioactive waste.

Every person who handles and disposes of radioactive waste shall comply with article 33.1-10. Every person who handles and disposes of TENORM shall also comply with the applicable requirements of this article.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-03-04, 23.1-08-03; S.L. 2017, ch. 199, §§ 18, 23

33.1-20-01.1-10. [Reserved].

33.1-20-01.1-11. Industrial waste and special waste.

Every person who generates industrial waste or special waste or who operates a landfill for disposal of municipal waste, industrial waste, or special waste shall comply with this article and this section.

1. Industrial waste, except as provided by subsection 3:

    a. May be codisposed with municipal waste in a municipal waste landfill in amounts less than or equal to ten percent by month of the weight of the municipal waste, except that the accumulated amount of industrial waste must not exceed twenty thousand tons [18,143.69 metric tons] per year or three thousand tons [2,721.55 metric tons] in any one month; or

    b. May be disposed in a landfill which complies with chapter 33.1-20-07.1, except that the accumulated amount must not exceed twenty-five thousand tons [22,679.62 metric tons] per year or three thousand tons [2,721.55 metric tons] in any one month unless larger amounts in one month resulting from remediation of spills or cleanup projects are approved by the department; or

    c. Otherwise must be disposed in a landfill which complies with chapter 33.1-20-10 when the amount exceeds twenty-five thousand tons [22,679.62 metric tons] per year.

2. The disposal of non-CCR special waste must comply with chapter 33.1-20-07.1 and the disposal of CCR must comply with chapter 33.1-20-08.

3. The disposal of municipal solid waste (MSW) incinerator ash in an accumulated amount greater than three thousand tons [2,721.55 metric tons] per year must comply with chapter 33.1-20-10.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-12. Waste treatment.

The department may require the treatment of a solid waste which may have incompatible characteristics with another solid waste prior to or during codisposal or which may produce a constituent in the waste's laboratory extract or leachate that exceeds twenty percent of a toxicity standard provided by section 33.1-24-02-14 or ten parts per million polychlorinated biphenols. The department must consider factors such as the site hydrogeological characteristics, toxicity of the waste, anticipated leachate quality, mobility of waste constituents, fate of leachate constituents during migration, potential site capacity, or local uses of waters of the state.

1. Treatment, when performed, must reduce:

   a. Toxicity of the waste;

   b. The mobility of constituents contained in or derived from the waste into leachate; or

   c. Both the toxicity and mobility.

2. When treatment is required, the generator of the solid waste or the owner or operator of the facility at which the waste would be treated must provide a demonstration of the treatment technology for approval by the department.

3. An owner or operator may propose and demonstrate treatment of solid waste so as to remove or separate toxic materials or constituents from the waste prior to disposal. In evaluating the demonstration, the department shall consider such factors as technical feasibility; the proposed management of the removed or separated waste materials or constituents; the physical, chemical, and biological processes affecting fate and transport; relative degree of removal of the toxic materials or constituents; or the resulting characteristics of the waste or leachate. If the treatment achieves leachate concentrations of constituents in or derived from the remaining waste which are less than the standards of article 33.1-16, the department may reduce or waive one or more of the criteria of this article which are enumerated in one or more of the following subdivisions:

   a. The liner or hydraulic barrier.

   b. The leachate removal system.

   c. The site efficiency for collection or rejection of precipitation that falls on the landfill.

   d. The ground water monitoring plan and system.

   e. The plan of operation.

   f. The postclosure plan and postclosure period.

   g. Recordkeeping and reporting.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-13. Certified laboratory.

All waste, leachate, and water analysis required by article 33.1-20 must be conducted by a laboratory approved by the department's certification procedures.

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

Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23

33.1-20-01.1-14. Variances.

Whereupon written application the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship or would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe. The department may not approve variances for CCR facilities or the handling of CCR.

History: Effective January 1, 2019; amended effective July 1, 2020; October 1, 2024.
General Authority: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-08-03; S.L. 2017, ch. 199, § 23