NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTH DAKOTA ADMINISTRATIVE CODE §§ 33.1-12-01-02 AND 33.1-12-01-03
are being amended as follows:

**33.1-12-01-02. Tank registration.**

Tank owners and operators shall register their tanks with the fund on an annual basis~~,~~ and the registration year runs ~~August~~February first through ~~July~~January thirty-first. The department shall send, electronically or by mail, to all known tank owners and operators a ~~registration~~ letter ~~and billing notice. The letter will explain~~ explaining the function of the fund and the requirement to have all tanks owned or operated registered and all fees paid ~~before~~ prior to a petroleum release incident in order to be eligible for reimbursement.

**History:** Effective October 1, 2022; amended effective _____, 2025.
**General Authority:** NDCC 23.1-12-05, 28-32-02
**Law Implemented:** NDCC 23.1-12-17

**33.1-12-01-03. Registration fee.**

1. ~~For each aboveground or underground tank, owned or operated by the tank owner or operator, the~~ The owner or operator shall pay a total annual registration fee for each aboveground and underground tank. The total annual registration fee is due and payable on ~~August~~February first. The total annual registration fee consists of both the annual base registration fee and the classification system matrix fee, as described in subsection 5.

2. No re-registration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing will reflect the tank status change.

3. For each aboveground or underground tank, the annual base registration fee is ~~one hundred forty~~one hundred fifty dollars. ~~If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual base registration fee of one hundred forty dollars will increase to one hundred fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is seven million dollars or more and the annual base registration fee has been increased to one hundred fifty dollars, the annual base registration fee will be reduced to one hundred forty dollars~~ If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds ~~nine~~ten million dollars~~,~~ the annual base registration fee will be reduced to one hundred dollars. The annual base registration fee will continue at one hundred dollars until the fund balance does not exceed ~~nine~~ten million dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than ~~nine~~ten million dollars~~,~~ the annual base registration fee will return to ~~one hundred forty~~one hundred fifty dollars.

4. For each aboveground or underground tank, the classification system matrix fee ~~must~~shall be calculated based on the degree of hazard associated with the tank classification risk using the multiplier factors in Table 1 or Table 2.

5. The total annual fee is computed by the following equations:

   X = (Y)(a) - applies only to underground storage tanks; or

   X = (Y)(b) - applies only to aboveground storage tanks.

   Where:

   X = total annual fee applied to each tank

Y = annual base registration fee for each tank

a = rate multiplier assigned to the registered site with the type of underground storage tank(s) on location from Table 1.

b = rate multiplier assigned to registered site with the type of aboveground storage tank(s) on location from Table 2.

Table 1

These rate multipliers apply to underground storage tank(s) only:

| Underground Storage Tank Type at Registered Tank Location | Rate multiplier |
|---|---|
| 1 = Double wall piping & tank(s) - Underground 2009 and newer installation | 1.00 |
| 2 = Double wall piping & tank(s) - Underground 2008 and older installation | 1.25 |
| 3 = Single wall underground tank(s) with double wall piping | 1.50 |
| 4 = Double wall underground tank(s) with single wall piping | 1.75 |
| 5 = Single wall underground tank(s) with single wall piping | 2.00 |

Table 2

These rate multipliers apply to aboveground storage tank(s) only":

| Aboveground Storage Tank Type at Registered Tank Location | Rate multiplier |
|---|---|
| 1 = Aboveground tank(s) feeding aboveground piping | 1.00 |
| 2 = Aboveground tank(s) feeding underground piping with *leak detection | 1.50 |
| 3 = Aboveground tank(s) feeding underground piping without *leak detection | 2.00 |

*Note: See definition 4 in NDAC 33.1-12-01-01.Definitions

6. Additional fees may apply, as specified in North Dakota Century Code section 23.1-12-17.

**History:** Effective October 1, 2022; amended effective , 2025.
**General Authority:** NDCC 23.1-12-05, 28-32-02
**Law Implemented:** NDCC 23.1-12-17

NORTH DAKOTA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 33.1-13-01, N.D. Admin. Code, is created as follows:

# ARTICLE 33.1-13
# ~~RESERVED~~ABOVEGROUND STORAGE TANKS



## CHAPTER 33.1-13-01
## TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENT FOR OWNERS AND OPERATOR OF ABOVEGROUND STORAGE TANKS



### 33.1-13-01-01. Definitions.

For purposes of this chapter in addition to the definitions set forth in chapter 33.1-13-01 and North Dakota Century Code chapter 23.1-12, the following definitions apply:

1. "Aboveground storage tank (AST) system" means an aboveground storage tank or combination of tanks at one location, including any connected piping and containment system.

2. "Ancillary equipment" means any devices including such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of liquid fuel to and from an aboveground storage tank.

3. “Change in service” means continued use of an aboveground storage tank system to store a substance other than liquid fuel.

4. "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the aboveground storage tank system under conditions likely to be encountered.

5. "Connected piping" means all piping including valves, elbows, joints, flanges, and flexible connectors attached to a aboveground storage tank system through which liquid fuel flows. For purposes of determining how much piping is connected to any individual aboveground storage tank system, the piping that joins two aboveground storage tank systems should be allocated equally between them.

6. “Containment sump” means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

7. “Empty” means the aboveground storage tank system that contains no more than one inch [2.5 centimeters] of residue, or three-tenths of one percent by weight of the total capacity of the aboveground storage tank system remains in the system.

8. “Excavation zone” means an area where excavation of liquid fuel contaminated soil has been completed.

9. "Existing aboveground storage tank system" means an aboveground storage tank system for which installation commenced on or before [effective date of this chapter]. Installation has commenced if:

    a. A continuous onsite physical construction or installation program has commenced; or

    b. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for installation of the aboveground storage tank system.

10. "Free product" refers to liquid fuel that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

11. “International Fire Code” refers to the National Fire Prevention Association codes of practice NFPA 30 - Flammable and Combustible Liquids Code and NFPA 30A - Code for Motor Fuel Dispensing Facilities and Repair Garages.

12. “Interstitial monitoring” means any method of detecting a release of liquid fuel into, or verifying the integrity of, the space between the inner and outer walls of:

    a. A double-walled or double-bottomed tank; or

    b. Double-walled piping.

13. “Local fire code” means the adopted fire code of the political subdivision where an aboveground storage tank system is located.

14. "Maintenance" means the normal operational upkeep to prevent an aboveground storage tank system and ancillary equipment from releasing liquid fuel.

15. "New aboveground storage tank system" means an aboveground storage tank system that will be used to contain an accumulation of liquid fuel and for which installation commences after [effective date of this chapter].

16. “Normal head pressure” means the pressure exerted by a column of liquid in a system under standard operating conditions.

17. "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under this chapter.

18. “Operator” means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank system.

19. "Overfill release" is a spill that occurs when a tank is filled beyond its capacity, resulting in a discharge of the liquid fuel to the environment.

20. “Owner” means any person who owns an aboveground storage tank system, unless that aboveground storage tank system has been permanently closed or gone through a change in service.

21. “Person” means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. “Person” also includes a consortium, a joint venture, a commercial entity, and the United States government.

22. “Liquid fuel” includes petroleum, as defined in Century Code section 23.1-12-02, and alternative fuel, diesel fuel, gasoline, heating oil, kerosene, lubricating oil, and tractor fuel as defined in Century Code section 23.1-13-01.

23. “Petroleum tank release compensation fund” means the fund established by North Dakota Century Code chapter 23.1-12.

24. "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of steel or non-metallic materials that routinely contain, are compatible with and convey liquid fuel from an aboveground storage tank system to a dispenser, or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey liquid fuel from the aboveground storage tank system to a dispenser. This definition does not include vent, vapor recovery, or fill lines.

25. “Release” means any release of a liquid fuel product to the surface, surface water, subsurface of the land. This includes releases from the aboveground and the underground portions of an aboveground storage tank system and aboveground or underground releases associated with overfills and transfer operations as the liquid fuel product moves to or from an aboveground storage tank system.

26. "Release detection" means determining whether a release of liquid fuel has occurred from the aboveground storage tank system into the environment or into the interstitial space between the aboveground storage tank system and its secondary barrier or secondary containment around it.

27. “Repair” means to restore to proper operating condition a tank pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, or other underground storage tank system component that has caused a release of product from the underground storage tank system or has failed to function properly.

28. “Secondary containment” means containment which prevents any release from an aboveground storage tank system from reaching land or waters outside of the containment area, and can include remote impounding, diking, or different types of aboveground storage tank construction such as a double-walled or double- bottomed tank. Secondary

containment for underground piping connected to an aboveground storage tank system includes:

a. Release prevention by having an inner and outer barrier with a space between for monitoring;

b. A release detection method of monitoring the space between the inner and outer barriers for a leak or release of liquid fuel from; and

c. Containment sumps when used for interstitial monitoring of piping.

29. "Site" means the current or anticipated location of an aboveground storage tank system.

30. "State fire code" means chapter 10-07-01, Fire Prevention.

31. "Temporary closure" means an aboveground storage tank system is empty and not being used to store or dispense liquid fuel products.

32. "Upgrade" means the addition or retrofit of some part of an aboveground storage tank system such as cathodic protection, lining, or spill and overfill controls to improve the ability of an aboveground storage tank system to prevent the release of liquid fuel.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-02. General Requirements.**

1. This chapter applies to all owners and operators of an aboveground storage tank system as defined in North Dakota Century Code section 23.1-04.1-01(1).

2. Compliance with this chapter does not relieve an owner or operator of the requirements of any other state and federal laws and rules applicable to an aboveground storage tank system. All aboveground storage tanks must be in compliance with Spill Prevention Control and Countermeasures (SPCC) plan regulations.

3. Any new or upgraded aboveground storage tank system, including tanks, piping, secondary containment, and ancillary equipment must:

   a. Be constructed, installed, maintained, and tested in accordance with the edition of the International Fire Code that is referenced in the state fire code or local fire code;

   b. Be equipped with secondary containment; and

   c. For piping that routinely contains liquid fuel and is in contact with an electrolyte or the ground, must be double-walled and able to continuously monitor for releases through the inner pipe wall in accordance with section 33.1-13-01-10. The interstitial space between the inner and outer pipe walls must drain to a containment sump.

4. An owner or operator shall provide a method, or combination of methods, of release detection that:

   a. Can detect a release from any portion of the tank and the connected piping that routinely contains liquid fuel; and

b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

5. An existing aboveground storage tank system must be maintained in accordance with code requirements that were in effect at the time of installation. If an existing aboveground storage tank system is no longer compliant with or was not installed in compliance with the rules of this chapter, it must be made compliant, upgraded, or closed following the requirements of section 33.1-13-01-08.

6. The Department may specify compliance schedules necessary for owners and operators to come into compliance with this chapter. Compliance with section 33.1-13-01-05(2)(d) must be implemented before January 1, 2030.

7. An owner or operator shall perform and document system inspections at least every thirty days and make inspection reports available at the department's request. Regarding these inspections:

   a. Tanks and aboveground piping must be visually inspected for evidence of leakage.

   b. A secondary containment inspection must include:

      (1) Checking for the presence of leaked or overfilled liquid fuel;

      (2) Visual inspection of the secondary containment area's integrity and ability to contain a leak or failure; and

      (3) Verifying that the containment area is free of vegetation, debris, water, and obstructions.

   c. All secondary containment sumps must be visually inspected for damage and for the presence of liquid fuel products.

8. An owner or operator shall cooperate fully with:

   a. Inspections, monitoring, and testing conducted by the department or the department's designee; and

   b. Requests by the department to submit documents, conduct testing, and conduct monitoring.

9. An owner or operator must demonstrate financial responsibility according to North Dakota Century Code chapter 23.1-12.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-03. General release detection requirements for aboveground storage tank systems.**

1. An owner or operator of a new aboveground storage tank that is secondarily contained shall provide release detection for tanks by interstitial monitoring or visual inspection as follows:

a. For double-walled or double-bottomed aboveground storage tank systems, the inspection or testing method must detect a release through the inner wall in any portion of the tank that routinely contains product.

(1) The interstitial space between the tank walls must be inspected and documented at least monthly or have a continuous sensor or gauge installed.

(2) If using a continuous sensor or gauge, it must be tested at least annually for functionality.

b. For aboveground storage tank systems with a secondary containment barrier, the inspection or testing method used must detect a release between the aboveground storage tank system and the secondary containment barrier.

(1) The secondary containment barrier around and beneath the aboveground storage tank system must meet the requirements of section 33.1-13-01-02.

(2) The secondary containment barrier must direct a release to a monitoring point that allows for detection.

(3) The monitoring point must be inspected and documented at least monthly.

(4) Precipitation must not be allowed to accumulate to render the monitoring point inoperative.

**History:** Effective _____, 2025.
**General Authority:** NDCC 23.1- -02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-04. Release detection requirements for existing aboveground storage tanks.**

An owner or operator of an existing aboveground storage tank system or tank that does not meet the secondary containment requirements for new tank systems in section 33.1-13-01-02(3), shall provide release detection for tanks in accordance with at least one of the following methods:

1. Inventory method.

a. Statistical inventory reconciliation. Statistical inventory reconciliation must be conducted on a monthly basis by a statistical inventory reconciliation vendor to detect a release rate no greater than two-tenths gallon [.76 liters] per hour; or

b. Inventory control. If statistical inventory reconciliation is not able to be performed by a statistical inventory reconciliation vendor due to configuration of the aboveground storage tank system, the department may approve inventory control. Liquid fuel inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least one percent of flow-through plus one hundred thirty gallons [492.1 liters] in the following manner:

(1) Inventory volume measurements for liquid fuel inputs, withdrawals, and the amount remaining in the tank must be recorded each operating day;

(2) The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch [3.05 millimeters];

(3) The liquid fuel inputs must be reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery; and

(4) Liquid fuel dispensing from an aboveground storage tank system must be metered and recorded within the local standards for meter calibration or an accuracy of six cubic inches [98.2 milliliters] for every five gallons [18.93 liters] of product withdrawn.

2. Manual tank gauging method. Only tanks of two thousand gallons [7570.80 liters] or less nominal capacity may use this as the sole method of release detection. Manual tank gauging must be performed at least every 30 days and meet the following requirements:

a. Tank liquid level measurements must be taken at the beginning and end of a period of at least thirty-six hours during which no liquid is added to, or removed from, the tank;

b. Level measurements must be based on an average of two consecutive stick readings at both the beginning and ending of the period;

c. The equipment used must be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch [3.05 millimeters]; or

d. A suspected leak is subject to the requirements of sections 33.1-13-01-10 through 33.1-13-01-12 if the variation between beginning and ending measurements exceeds the weekly or monthly standards as outlined below:

(1) Nominal Standard Tank Capacity of 500 gallons [1892.71 liters] or less.

(a) Weekly Standard (one test) - variance of 10 gallons [37.85 liters].

(b) Monthly Standard (average of 4 tests) - variance of 5 gallons [18.93 liters].

(2) Nominal Standard Tank Capacity of 551-1000 gallons [2085.7603785.41 liters].

(a) Weekly Standard (one test) - variance of 13 gallons [49.21 liters].

(b) Monthly Standard (average of 4 tests) - variance of 7 gallons [26.50 liters].

3. Automatic tank gauging method. Equipment for automatic tank gauging must meet the following requirements:

a. The automatic product level monitor test must be able to detect a two-tenths gallon [.76 liter] per hour leak rate from any portion of the tank that routinely contains liquid fuel; and

b. Automatic tank gauging must perform a leak test at least once every thirty days with the system operating with continuous in-tank leak detection on an uninterrupted basis or within a process that allows the system to gather incremental measurements to determine the leak status of the tank.

4. Other methods Use of any other release detection method, or combination of methods, may be approved by the department if:

a. It can detect a two-tenths gallon [.76 liter] per hour leak rate or a release of one hundred fifty gallons [567.81 liters] within a month with a probability of detection of ninety-five hundredths and a probability of false alarm of five one-hundredths; or

b. Owner or operator can demonstrate to the department that the method can detect a release as effectively as any of the methods in subsections 1 or 2. In comparing methods, the department shall consider the size of release the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner or operator shall comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-05. Release detection requirements for aboveground storage tank piping. An owner or operator shall provide the following release detection for piping:**

1. Aboveground piping. An owner or operator shall:

   a. Visually inspect and document leaks and seepage at least monthly; and

   b. Repair any areas of the piping, including pipe joints, that show visible seepage.

2. Underground piping. Release detection for new underground piping of an aboveground storage tank system must meet the following requirements:

   a. Any new piping system must be secondarily contained.

   b. The interstitial space between the inner and outer pipe walls must drain to a containment sump.

   c. Underground piping must be monitored for leaks through one of the following:

      (1) A piping system that is pressurized using a pump or is under any other type of pressure more than normal head pressure of the aboveground storage tank, must be equipped with:

         (a) An electronic line leak detector and a positive shut-off normally-closed solenoid valve. A method which alerts the operator to the presence of a leak by shutting off the flow of liquid fuel through piping and triggering an audible or visual alarm. May be used only if they continuously detect leaks of three gallons [11.36 liters] per hour at ten pounds per square inch line pressure within one hour; and

         (b) Secondary containment monitored for releases by one of the following methods:

            i. Continuous interstitial monitoring between the inner and outer barriers of underground piping may be used if the system is designed, constructed, and installed to detect a leak from any portion of the piping that routinely contains liquid fuel. All transition, dispenser, and other sumps must be equipped with liquid sensing float sensors that trigger an audible or visual alarm and shut-off the flow of liquid fuel through all buried piping and the inner wall in any portion of the piping that routinely contains liquid fuel; or

            ii. The department may approve another method of release detection if the owner and operator can demonstrate that the method, or combination

of methods, can detect a two-tenths gallon [.76 liter] per hour leak rate or a release of one hundred fifty gallons [567.81 liters] within a month with a probability of detection of ninety-five percent and a probability of false alarm of five percent. In comparing methods, the department shall consider the size of release the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner or operator shall comply with any Department imposed conditions imposed by the department on its use to ensure the protection of human health and the environment.

(2) A piping system with no more than normal head pressure from the aboveground storage tank system must be continuously monitored for releases by interstitial monitoring. Interstitial monitoring between the underground piping and a secondary barrier immediately around it may be used, if the system is designed, constructed, and installed to detect a leak from any portion of the piping that routinely contains product, and the sampling or testing method can detect a leak through the inner wall in any portion of the piping that routinely contains product. The piping system must have a positive shutoff normally closed solenoid valve installed before any buried piping. All transition, dispenser, and other sumps must be equipped with liquid sensing float sensors that trigger an audible or visual alarm and shut off the flow of liquid fuel through all buried piping.

d. Release detection for existing underground piping must monitor for leaks through at least one of the following:

(1) A piping system that is pressurized using a pump or any other type of underground piping system that is under more than normal head pressure of the aboveground storage tank system must meet one of the following requirements:

(a) The piping system is secondarily contained and meets the release detection requirements for new double-walled piping in subsection 2; or

(b) The piping system is single-walled and meets the release detection requirements for electronic line leak detectors in subparagraph a of paragraph 1 of subdivision c; or has passed a yearly line tightness test that meets the release detection requirements of subparagraph b. A positive shut-off normally-closed solenoid valve must be installed before any buried piping.

(2) Annual line tightness tests. A piping system pressurized by normal head pressure from the aboveground storage tank system must conduct an annual test of piping that can detect a one-tenth gallon [.38 liter] per hour leak rate at one and one-half times the operating pressure. The initial line test must be performed within 180 days of the effective date of this chapter. A normally-closed solenoid valve must be installed at the connection between the tank and piping to eliminate continuous head pressure on the piping, by [one year from effective date of this chapter], if not already installed.

(3) Annual testing. An owner or operator shall conduct an annual test of the electronic line leak detection systems and, when installed, sump alarm systems to test for proper operation, in accordance with one of the following:

(a) Manufacturer's instructions;

(b) A code of practice developed by a nationally recognized association or independent testing laboratory; or

(c) Requirements determined by the department to be no less protective of human health and the environment than paragraphs 1 or 2.

(4) Applicable tank methods. Any of the methods in this section may be used for release detection if they are designed to detect a release from any portion of the underground piping that routinely contains liquid fuel.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-06. Reporting requirements.**

1. An owner or operator shall submit notice of an aboveground storage tank system's existence to the department at least thirty days prior to bringing the aboveground storage tank system into use, using the form supplied by the department. Prior to submitting notice of a new aboveground storage tank system greater than five hundred gallons [1892.71 liters] capacity, an owner or operator shall submit plans to the state fire marshal for review and acceptance and pass an installation inspection by the state fire marshal, in accordance with state fire code or local fire code.

2. Within thirty days of acquisition, any person who assumes ownership of a registered aboveground storage tank system shall submit to the department a notice of the ownership change, using the form supplied by the department.

3. An owner or operator that cannot comply with any method of release detection shall notify the department within sixty days of the noncompliance.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-07. Recordkeeping.**

1. An owner and operator, and any previous owners and operators, must maintain records demonstrating compliance with all applicable requirements of sections 33.1-13-01-02 and 33.1-13-01-05 relating to those records:

   a. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer must be maintained for three years from the date of installation;

   b. The results of any sampling, testing, or monitoring must be maintained for at least three years;

   c. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located onsite must be maintained for at least three years after completion. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for three years from the date of installation;

d. Records in accordance with section 33.1-13-01-08 that can demonstrate compliance with closure requirements; and

e. The results of the excavation zone assessment required in section 33.1-13-01-09 must be maintained for at least three years after completion of permanent closure or change in service.

2. Records shall be maintained as follows:

a. At the aboveground storage tank system location and immediately available for inspection by the department; or

b. At a readily available alternative site and be provided for inspection to the department upon request.

c. In the event records cannot be retained as described in subdivisions a and b, the records must be provided to the department.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-08. Closure requirements**

1. Temporary Closure.

a. When an aboveground storage tank system is in temporary closure, owners and operators shall continue to comply with state fire code or local fire code as required by section 33.1-13-01-02, and if a release is suspected or confirmed, comply with sections 33.1-13-01-10 through 33.1-13-01-12. Release detection is not required if the aboveground storage tank system is empty.

b. When an aboveground storage tank system is in temporary closure for three months or more, owners and operators must:

(1) Leave vents open and functioning; and

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

c. If an aboveground storage tank system is in temporary closure for more than twelve months and does not meet in the requirements of section 33.1-13-01-02, owners and operators must permanently close the aboveground storage tank system at the end of this twelve-month period in accordance with this section unless the department provides an extension of the twelve-month temporary closure period. Owners and operators shall complete a site assessment in accordance with section 33.1-13-01-09 before applying for an extension.

d. Owners or operators may request in writing an extension of the twelve-month temporary closure period. The request should state the need for an extension and include a complete site assessment in accordance with section 33.1-13-01-09. Extensions will only be granted at the department's discretion for a limited period of time.

2. Permanent closure.

a. At least thirty days before beginning either permanent closure or a change in service under subsection 3, owners and operators shall notify the department of their intent to permanently close or make a change in service, unless it is in response to corrective action or noncompliance with this chapter. The required assessment under section 33.1-13-01-09 must be performed after notifying the department but before completion of the permanent closure or change in service.

b. Permanent closure of a tank must comply with state or local fire code.

c. Any existing aboveground storage tank system that cannot apply a method of release detection that complies with the requirements of this chapter must complete the permanent closure procedures in this section and section 33.1-13-01-09.

3. Change in Service. Before a change in service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with section 33.1-13-01-09.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-09. Site Assessment**

1. Before completion of a permanent closure or a change in service, owners and operators shall measure for the presence of a release where contamination is mostlikely to be present at the aboveground storage tank site. In selecting sample types and locations and measurement methods, owners and operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release.

2. If contaminated soil, contaminated ground water, or free product as a liquid or vapor is discovered under subsection 1, or by any other manner, owners and operators shall begin corrective action in accordance with sections 33.1-13-01-09 through 33.1-13-01-14.

3. If an aboveground storage tank system is permanently closed before [effective date of this chapter], and the department determines that a release from the aboveground storage tank may pose a current or potential threat to human health and the environment, the department may require the owner or operator to assess the excavation zone and close the aboveground storage tank system in accordance with sections 33.1-13-01-08 through 33.1-13-01-14.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-10. Reporting of a release or suspected release.**

An owner or operator shall report a release or suspected release to the department (e.g., by telephone, or online spill report form) within twenty-four hours of any of the following:

1. The discovery of released liquid fuel at the aboveground storage tank site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);

2. Unusual operating conditions observed by an owner or operator (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank), unless system equipment is found to be defective, but not leaking, and is immediately repaired or replaced;

3. Monitoring results from a release detection method required under section 33.1-13-01-04 that indicate a release may have occurred unless:

   a. The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result; or

   b. In the case of inventory control, a second month of data does not confirm the initial result.

4. When a release detection method operated in accordance with the performance standards in section 33.1-13-01-04 indicates a release may have occurred, an owner or operator shall notify the department in accordance with this section.

5. Any spill or overfill resulting in a release that exceeds twenty-five gallons [94.63 liters] or any volume that causes a sheen on nearby surface water or threatens public health or safety.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-11. Response.**

If a release from an aboveground storage tank is confirmed under section 33.1-13-01-14 or is identified in any other manner, an owner or operator shall perform the following actions:

1. Take immediate action to prevent any further release of the liquid fuel into the environment, including removing as much of the liquid fuel from the aboveground storage tank system as is necessary to prevent further release to the environment;

2. Identify and mitigate fire, explosion, and vapor hazards posed by vapors or free product that have entered into subsurface structures (such as sewers or basements) and remove any flammable products in a safe and competent manner to prevent fires or explosions.

3. Unless otherwise directed by the department, an owner or operator shall perform the following abatement measures:

   a. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, an owner or operator shall comply with applicable state and local requirements;

   b. Measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank site, unless the presence and source of the release have been confirmed in accordance with the site check required by subsection 2 of section 33.1-13-01-12 or the closure siteassessment in subsection 1 of section 33.1-13-01-09. In selecting sampletypes and locations and measurement methods, the owner or operator shall consider the nature of the stored substance, the type

of backfill, depth to ground water, and other factors as appropriate for identifying the presence and source of the release; and

c. Determine the presence of free product, and begin free product removal as soon as practicable in a manner that:

(1) Minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site; and

(2) Properly treats, discharges, or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

d. Determine the horizontal and vertical extent of contamination.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-12. Release investigation and confirmation.**

1. When required by the department, an owner or operator shall determine if an aboveground storage tank system is the source of offsite impacts, including the discovery of liquid fuel, such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters.

2. The department may require an owner or operator to use one of the following methods to investigate a release:

a. System test. An owner or operator shall conduct tests according to the requirements for release detection or tightness testing sections 33.1-13-01-04 and section 33.1-13-01-05.

(1) The test must determine whether:

(a) A leak exists in that portion of the tank or piping that routinely contains product; or

(b) A breach of the secondary containment has occurred.

(2) If the system test confirms a leak into the secondary containment or a release to the environment, an owner or operator shall repair, replace, upgrade, or close the aboveground storage tank system, and begin corrective action in accordance with sections 33.1-13-01-11 through 33.1-13-01-14.

(3) If the test results for the aboveground storage tank system, tank, and delivery piping do not indicate that a leak exists and environmental contamination is not the basis for suspecting a release, further investigation is not required.

(4) If the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release an owner or operator shall conduct a site check as described in subsection 2.

b. Site check. An owner or operator shall measure for the presence of a release where contamination is most likely to be present at the aboveground storage tanksite. In

selecting sample types and locations and measurement methods, an owner or operator shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results for the excavation zone or the aboveground storage tanksite indicate that a release has occurred, owners and operators must begin corrective action in accordance with sections 33.1-13-01-11 through 33.1-13-01-14.

(2) If the test results for the excavation zone or the aboveground storage tank site do not indicate that a release has occurred, further investigation is not required.

c. Any other method approved of by the department.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-13. Initial site characterization.**

1. An owner or operator shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in sections 33.1-13-01-11 and 33.1-13-01-12. This information must include the following:

   a. Data on the nature and estimated quantity of release;

   b. Data from available sources and site investigations, concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

   c. Results of the site check required under subsection 2 of section 33.1-13-01-12;

   d. Results of any investigations required under this chapter;

   e. The name of the persons responsible for implementing the free productremoval measures;

   f. The estimated quantity, type, and thickness of free product observed ormeasured in wells, boreholes, and excavations;

   g. The type of free product recovery system used;

   h. Whether any discharge will take place onsite or offsite during the recoveryoperation and where this discharge will be located;

   i. The type of treatment applied to, and the effluent quality expected from, any discharge;

   j. The steps that have been or are being taken to obtain necessary permits for any discharge; and

   k. The intended disposition of the recovered free product.

2. Within forty-five days of release confirmation, an owner or operator shall submit the information required under this section to the department in a format required by the department.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03

**33.1-13-01-14. Corrective action plan.**

1. Owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the department and shall modify the plan as necessary to meet this standard. The department may require an owner or operator to submit additional information. The plan shall be submitted according to a schedule and format established by the department.

2. After the approval of the corrective action plan after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the department may consider the following factors:

   a. The physical and chemical characteristics of the liquid fuel, including its toxicity, persistence, and potential for migration;

   b. The hydrogeologic characteristics of the tank location and the surroundingarea;

   c. The proximity, quality, and current and future uses of nearby surface waterand ground water;

   d. The potential effects of residual contamination on nearby surface water and ground water;

   e. An exposure assessment;

   f. Any information assembled in compliance with sections 33.1-13-01-09 through 33.1-13-01-14; and

   g. Any additional information requested by the department.

3. Upon approval of the corrective action plan or as directed by the department, owners and operators shall:

   a. Implement the plan, including any modifications to the plan made by the department; and

   b. Monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the department.

4. An owner or operator may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided the owner or operator:

   a. Notifies the department of the intention to begin cleanup;

   b. Complies with any conditions imposed by the department, including haltingcleanup or mitigating adverse consequences from cleanup activities;

c. Incorporates the self-initiated cleanup measures in the corrective actionplan; and

d. Use abatement of free product migration as a minimum objective for the design of the free product removal systems.

**History:** Effective , 2025.
**General Authority:** NDCC 23.1-04.1-02
**Law Implemented:** NDCC 23.1-04.1-02, 23.1-04.1-03