CHAPTER 33.1-15-01
GENERAL PROVISIONS

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33.1-15-01-01. Purpose.

It is the purpose of these air quality standards and emission regulations to state such requirements as shall be required to achieve and maintain the best air quality possible, consistent with the best available control technology, to protect human health, welfare, and property to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience for the people, and to facilitate the enjoyment of the natural attractions of this state.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-02; S.L. 2017, ch. 199, § 21

33.1-15-01-02. Scope.

These air quality standards and emission regulations apply to any source or emission existing partially or wholly within North Dakota.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-03. Authority.

The department of environmental quality has been authorized to provide and administer this article under the provisions of North Dakota Century Code chapter 23.1-06.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-04. Definitions.

As used in this article, except as otherwise specifically provided or when the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23.1-06.

2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof emitted to the ambient air.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property or animal or plant life, or which unreasonably interferes with the enjoyment of life or property.

4. "Ambient air" means the surrounding outside air.

5. "ASME" means the American society of mechanical engineers.

6. "Coal conversion facility" means any of the following:

    a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.

    b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including coal

gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.

c. A coal beneficiation plant, and all additions thereto, which improve the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.

7. "Control equipment" means any device or contrivance which prevents or reduces emissions.

8. "Department" means the department of environmental quality.

9. "Emission" means a release of air contaminants into the ambient air.

10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable emission limit or emission standard specified in this article or a permit issued pursuant to this article.

11. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.

12. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency, including those requirements developed pursuant to title 40 Code of Federal Regulations parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to title 40 Code of Federal Regulations 52.21 or under regulations approved pursuant to title 40 Code of Federal Regulations part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.

13. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

14. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.

15. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.

16. "Hazardous waste" has the same meaning as given by chapter 33.1-24-02.

17. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

18. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.

19. "Industrial waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.

20. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

21. "Installation" means any property, real or personal, including processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.

22. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.

23. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.

24. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.

25. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

26. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.

27. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

28. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.

29. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.

30. "Pesticide" includes:

    a. Any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;

    b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscacides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.

31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.

32. "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths micrometers.

33. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

34. "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

35. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].

36. "Premises" means any property, piece of land or real estate, or building.

37. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

38. "Process weight rate" means the rate established as follows:

    a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

    b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. If the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

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

40. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.

41. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1,144 degrees Kelvin to 1,255 degrees Kelvin]).

42. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

43. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.

44. "Source" means any property, real or personal, or person contributing to air pollution.

45. "Source operation" means the last operation preceding emission which operation:

    a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and

    b. Is not an air pollution abatement operation.

46. "Special waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

47. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.

48. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].

49. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.

50. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.

51. "Trash" means refuse commonly generated by food warehouses, wholesalers, and retailers which is comprised only of nonrecyclable paper, paper products, cartons, cardboard, wood, wood scraps, and floor sweepings and other similar materials. Trash may not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash must be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste, and similar substances.

52. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on July 1, 2015, which is incorporated by reference.

53. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998; June 1, 2001; March 1, 2003; January 1, 2007; April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014; July 1, 2016.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33.1-15-01-05. Abbreviations.

The abbreviations used in this article have the following meanings:

A	-	ampere
A.S.T.M.	-	American Society for Testing and Materials
Btu	-	British thermal unit
°C	-	degree Celsius (centigrade)
cal	-	calorie
CdS	-	cadmium sulfide
cfm	-	cubic feet per minute
CFR	-	Code of Federal Regulations
cu ft	-	cubic feet
CO	-	carbon monoxide
CO_2	-	carbon dioxide
dcf	-	dry cubic feet
dcm	-	dry cubic meter
dscf	-	dry cubic feet at standard conditions
dscm	-	dry cubic meter at standard conditions
eq	-	equivalents
°F	-	degree Fahrenheit
ft	-	feet
g	-	gram
gal	-	gallon
g eq	-	gram equivalents
gr	-	grain
hr	-	hour
HCl	-	hydrochloric acid
Hg	-	mercury
H_2O	-	water
H_2S	-	hydrogen sulfide
H_2SO_4	-	sulfuric acid
Hz	-	hertz
in.	-	inch
j	-	joule
°K	-	degree Kelvin
k	-	1,000
kg	-	kilogram
l	-	liter
lpm	-	liter per minute
lb	-	pound

m	-	meter
m^3	-	cubic meter
meq	-	milliequivalent
min	-	minute
mg	-	milligram - 10^{-3} gram
Mg	-	megagram - 10^{6} gram
ml	-	milliliter - 10^{-3} liter
mm	-	millimeter - 10^{-3} meter
mol	-	mole
mol.wt.	-	molecular weight
mV	-	millivolt
N_2	-	nitrogen
N	-	newton
ng	-	nanogram - 10^{-9} gram
nm	-	nanometer - 10^{-9} meter
NO	-	nitric oxide
NO_2	-	nitrogen dioxide
NO_x	-	nitrogen oxides
O_2	-	oxygen
Pa	-	pascal
PM	-	particulate matter
$PM_{2.5}$	-	particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers
PM_{10}	-	particulate matter with an aerodynamic diameter less than or equal to 10 micrometers
ppb	-	parts per billion
ppm	-	parts per million
psia	-	pounds per square inch absolute
psig	-	pounds per square inch gauge
°R	-	degree Rankine
s-sec	-	second
scf	-	cubic feet at standard conditions
scfh	-	cubic feet per hour at standard conditions
scm	-	cubic meters at standard conditions
scmh	-	cubic meters per hour at standard conditions
SO_2	-	sulfur dioxide
SO_3	-	sulfur trioxide
SO_x	-	sulfur oxides

sq ft	-	square feet
std	-	at standard conditions
TSP	-	total suspended particulate
µg	-	microgram - 10^{-6} gram
V	-	volt
W	-	watt
Ω	-	ohm

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-06. Entry onto premises - Authority.

Entry onto premises and onsite inspection shall be made pursuant to North Dakota Century Code section 23.1-06-11.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-11; S.L. 2017, ch. 199, § 21

33.1-15-01-07. Variances.

1. Where upon written application of the responsible person or persons the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship, 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 for prevention, control, or abatement of air pollution in harmony with the intent of the state and any applicable federal laws.

2. No variance may permit or authorize the creation or continuation of a public nuisance, or a danger to public health or safety.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-08. Circumvention.

No person shall cause or permit the installation or use of any device or any means which conceals or dilutes an emission of air contaminant which would otherwise violate this article.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-09. Severability.

If any provision of this article or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article and the various applications thereof are declared to be severable.

History: Effective January 1, 2019.

General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-10. Land use plans and zoning regulations.

1. **Planning agency land use plans.**

   a. The department will provide to planning agencies, for use in preparing land use plans, information concerning:

      (1) Air quality.

      (2) Air pollutant emissions.

      (3) Air pollutant meteorology.

      (4) Air quality goals.

      (5) Air pollution effects.

   b. The department will review all land use plans and prepare recommendations for consideration in the plan adoption process.

2. **Zoning agency regulations.**

   a. The department will provide to zoning control agencies, for use in preparing regulations, information concerning:

      (1) Air quality.

      (2) Air pollutant emissions.

      (3) Air pollution meteorology.

      (4) Air quality goals.

      (5) Air pollution effects.

   b. The department will review all zoning regulations and prepare recommendations for consideration in the regulation adoption process.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-11. [Reserved].

33.1-15-01-12. Measurement of emissions of air contaminants.

1. **Sampling and testing.** The department may reasonably require any person responsible for emission of air contaminants to make or have made tests, at a reasonable time or interval, to determine the emission of air contaminants from any source, for the purpose of determining whether the person is in violation of any standard under this article or to satisfy other requirements under the North Dakota Century Code chapter 23.1-06. All tests shall be made and the results calculated in accordance with test procedures approved or specified by the department. All tests shall be conducted by reputable, qualified personnel. The department shall be given a copy of the test results in writing and signed by the person responsible for the tests.

The owner or operator of a source shall notify the department using forms supplied by the department, or its equivalent, at least thirty calendar days in advance of any tests of emissions of air contaminants required by the department. Advanced notification for all other testing will be consistent with the requirements of the appropriate regulations but in no case will be less than thirty calendar days. If the owner or operator of a source is unable to conduct the performance test on the scheduled date, the owner or operator of a source shall notify the department as soon as practicable when conditions warrant and shall coordinate a new test date with the department.

Failure to give the proper notification may prevent the department from observing the test. If the department is unable to observe the test because of improper notification, the test results may be rejected.

2. **The department may make tests.** The department may conduct tests of emissions of air contaminants from any source. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices as may be necessary for proper determination of the emission of air contaminants.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-01-13. Shutdown and malfunction of an installation - Requirement for notification.

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the department at least twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:

   a. Identification of the specific facility to be taken out of service as well as its location and permit number.

   b. The expected length of time that the air pollution control equipment will be out of service.

   c. The nature and estimated quantity of emissions of air pollutants likely to be emitted during the shutdown period.

   d. Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period.

   e. The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

   f. Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article.

2. **Malfunctions.**

   a. When a malfunction in any installation occurs that can be expected to last longer than twenty-four hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations, the person responsible for such installation shall notify the department of such malfunction as soon as possible during normal working hours. The notification must contain a statement giving all pertinent facts, including the

estimated duration of the breakdown. The department shall be notified when the condition causing the malfunction has been corrected.

b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at 701-328-5188. After hours the department can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is 701-328-9921.

c. Unavoidable malfunction. The owner or operator of a source who believes any excess emissions resulted from an unavoidable malfunction shall submit a written report to the department which includes evidence that:

(1) The excess emissions were caused by a sudden, unavoidable breakdown of technology that was beyond the reasonable control of the owner or operator.

(2) The excess emissions could not have been avoided by better operation and maintenance, did not stem from an activity or event that could have been foreseen and avoided or planned for.

(3) To the extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions.

(4) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and possible.

(5) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality.

(6) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance or inadequate design of the malfunctioning equipment.

The report shall be submitted within thirty days of the end of the calendar quarter in which the malfunction occurred or within thirty days of a written request by the department, whichever is sooner.

The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that an unavoidable equipment malfunction occurred. The department may elect not to pursue enforcement action after considering whether excess emissions resulted from an unavoidable equipment malfunction. The department will evaluate, on a case-by-case basis, the information submitted by the owner or operator to determine whether to pursue enforcement action.

3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method for measuring or estimating emissions must be undertaken as soon as possible. The owner or operator of a source that uses an alternative method shall have the burden of demonstrating that the method is accurate. Timely repair of the emission monitoring system must be made. The provisions of this subsection do not apply to sources that are subject to monitoring requirements in chapter 33.1-15-21.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-01-14. Time schedule for compliance.

Except as otherwise specified, compliance with the provisions of this article shall be according to the following time schedule:

1. **New installations.** Every new installation shall comply as of going into continuous routine operation for its intended purpose.

2. **Existing installations.** Every existing installation shall be in compliance as of July 1, 1970, unless the owner or person responsible for the operation of the installation shall have submitted to the department in a form and manner satisfactory to it, a program and schedule for achieving compliance, such program and schedule to contain a date on or before which full compliance will be attained, and such other information as the department may require. If approved by the department, such date will be the date on which the person shall comply. The department may require persons submitting such program to submit subsequent periodic reports on progress in achieving compliance.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-01-15. Prohibition of air pollution.

1. No person shall permit or cause air pollution, as defined in section 33.1-15-01-04.

2. Nothing in any other part of this article concerning emission of air contaminants or any other regulation relating to air pollution shall in any manner be construed as authorizing or legalizing the creation or maintenance of air pollution.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-01-16. Confidentiality of records.

1. **Public inspection.** Any record, report, or information obtained or submitted pursuant to this article will be available to the public for inspection and copying during normal working hours unless the department certifies that the information is confidential. Anyone requesting department assistance in collecting, copying, certifying, or mailing public information must tender, in advance, the reasonable cost of those services.

2. **Information submitted as trade secrets.** The department may certify records, reports, or information, or particular part thereof, other than emission data, as confidential upon a showing that the information would, if made public, divulge methods or processes entitled to protection as trade secrets. Any person submitting trade secret information must present the information to the department in a sealed envelope marked "CONFIDENTIAL". Each page of any document claimed confidential must be clearly marked with the word "CONFIDENTIAL". The submission must contain two parts:

   a. The material claimed to contain trade secret information; and

   b. A request for confidential treatment including:

      (1) All information for which no claim is being made;

      (2) An affidavit stating how and why the information fulfills the conditions of confidentiality under this subsection; and

(3) An index to and summary of the information submitted which is suitable for release to the public.

3. **Accepted trade secret claims.** All information which meets the test of subsection 2 must be marked by the department as "ACCEPTED" and protected as confidential information.

4. **Rejected trade secret claims.** If the department determines that information submitted pursuant to subsection 2 does not meet the criteria of that subsection for confidential treatment, the department shall promptly notify the person submitting the information of that determination. The department shall in that event give that person at least twenty days in which to:

   a. Accept the determination of the department;

   b. Request that the information be returned to the person;

   c. Further justify the contention that the information deserves protection as a trade secret; or

   d. Further limit the scope of information for which a claim of confidentiality is made.

   If the person who submitted the information fails within the time period allowed by the department to demonstrate satisfactorily to the department that the information in the form presented qualifies for confidential treatment, the department shall promptly notify that person of that determination. If the person submitting the information did not request that it be returned, the department shall mark the information "REJECTED" and treat it as public information. The department's action on a reconsideration constitutes final agency action for purposes of judicial review. Appeal of this action must be to an appropriate district court.

5. **Appeal of nondisclosure claims.** Any person who identifies and tenders the reasonable cost of collecting, copying, certifying, and mailing particular information held by the department under subsection 2 may file with the department a petition for reconsideration stating how and why the public's interest would be better served by the release of the requested information than by its retention as confidential by the department. The department shall then reconsider the confidential status of the information. The department action on a petition for reconsideration constitutes final agency action for purposes of judicial review. Appeal of the department's action must be to an appropriate district court.

6. **Retention of confidential information.** All information which is accepted by the department as confidential must be stored in locked filing cabinets. Only those personnel of the department specifically designated by the department shall have access to the information contained therein. The department may not designate any person to have access to confidential information unless that person requires such access in order to carry out that person's responsibilities and duties. No person may disclose any confidential information except in accordance with the provisions of this section. No copies may be made except as strictly necessary for internal department use or as specified in subsection 8.

7. **Maintenance of log.** Persons designated by the department to maintain confidential files as herein provided shall maintain a log showing the persons who have had access to the confidential files and the date of such access.

8. **Transmittals of confidential information.** As necessary, confidential information acquired by the department under the provisions of the act, or this article, may be transmitted to such federal, state, or local agencies, when necessary for purposes of administration of any federal, state, or local air pollution control laws, which make an adequate showing of need to the department, provided that such transmittal is made under a continuing assurance of confidentiality.

9. **Relationship to issuance of permits.** The department may not process any application for a permit to construct or operate pursuant to chapter 33.1-15-14 or 33.1-15-15 until final agency action on confidential trade secret claims has been completed.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-12; S.L. 2017, ch. 199, § 21

33.1-15-01-17. Enforcement.

1. Enforcement action will be consistent with procedures as approved by the United States environmental protection agency.

2. Notwithstanding any other provision in this article, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of this article.

   a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

      (1) A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33.1-15-14-06.

      (2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33.1-15-14-06 and incorporated in a federally enforceable title V permit to operate.

      (3) Compliance test methods specified in this article.

   b. The following testing, monitoring, and information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

      (1) Any federally enforceable monitoring or testing methods, including those under title 40 Code of Federal Regulations parts 50, 51, 60, 61, 63, and 75.

      (2) Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in paragraph 1 or in subdivision a.

3. a. No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this article.

   b. No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring device or method required under this article.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-01-18. Compliance certifications.

Notwithstanding any other provision in this article, for the purpose of submission of compliance certifications the owner or operator is not prohibited from using the following in addition to any specified compliance methods:

1. A compliance assurance monitoring protocol approved for the source pursuant to subsection 10 of section 33.1-15-14-06.

2. Any other monitoring method approved for the source under paragraph 3 of subdivision a of subsection 5 of section 33.1-15-14-06 and incorporated into a federally enforceable title V permit to operate.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-02
AMBIENT AIR QUALITY STANDARDS

Section
33.1-15-02-01 Scope
33.1-15-02-02 Purpose
33.1-15-02-03 Air Quality Guidelines
33.1-15-02-04 Ambient Air Quality Standards
33.1-15-02-05 Methods of Sampling and Analysis
33.1-15-02-06 Reference Conditions
33.1-15-02-07 Concentrations of Air Contaminants in the Ambient Air Restricted

33.1-15-02-01. Scope.

The ambient air quality standards as presented in this chapter pertain to the ambient air within the boundaries of North Dakota.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-02-02. Purpose.

It is the purpose of these air quality standards to set forth levels of air quality for the maintenance of public health and welfare and to provide guidance to governmental and other parties interested in abating air pollution. Since the ambient air in North Dakota is generally cleaner than these standards, the standards are not a permit for the unnecessary degradation of air quality.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-02-03. Air quality guidelines.

In keeping with the purpose of these ambient air quality standards, the quality should be such that:

1. The public health will be protected including sensitive or susceptible segments of the population.
2. Concentrations of pollutants will not cause public nuisance or annoyance.
3. Agricultural crops, animals, forest, and other plant life will be protected.
4. Visibility will be protected.
5. Metals or other materials will be protected from abnormal corrosion or damage.
6. Fabrics will not be soiled, deteriorated, or their colors affected.
7. Natural scenery will not be obscured.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-02-04. Open Burning Restrictions

1. **Particulates and gases.** The standards of ambient air quality listed in table 1 and table 2 define the limits of air contamination by particulates and gases. Any air contaminant which exceeds these limits is hereby declared to be unacceptable and requires air pollution control measures. The stated limits include normal background levels of particulates and gases.

2. **Radioactive substances.** The ambient air shall not contain any radioactive substances exceeding the concentrations specified in article 33.1-10.

3. **Other air contaminants.** The ambient air shall not contain air contaminants in concentrations that would be injurious to human health or well being or unreasonably interfere with the enjoyment of property or that would injure plant or animal life. The department may establish, on a case-by-case basis, specific limits of concentration for these contaminants.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-02-05. Methods of sampling and analysis.

Air contaminants listed under table 1 shall be measured by the method or methods listed in title 40 Code of Federal Regulations parts 50 and 53. Hydrogen sulfide sampling equipment and methods must be approved by the department. Hydrogen sulfide analyzers must be designed for use as ambient air quality monitors and must be capable of meeting performance specifications as determined by the department.

The sampling and analytical procedures employed and the number, duration, and location of samples to be taken to measure ambient levels of air contaminants shall be consistent with obtaining results which are precise, accurate, and representative of the conditions being evaluated.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-02-06. Reference conditions.

The standards of ambient air quality listed in table 1 are corrected to a reference temperature of twenty-five degrees Celsius [298 degrees Kelvin] and a reference pressure of seven hundred sixty millimeters of mercury [101.3 kilopascals].

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-02-07. Concentrations of air contaminants in the ambient air restricted.

1. No person may cause or permit the emission of contaminants to the ambient air from any source in such a manner and amount that causes or contributes to a violation in the ambient air of those standards stated in section 33.1-15-02-04.

2. Nothing in any other part or section of this article may in any manner be construed as authorizing or legalizing the emission of air contaminants in such manner as prohibited in subsection 1.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

Table 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)
Inhalable Particulates PM_{10}	150 micrograms per cubic meter, 24-hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is equal to or less than one.
$PM_{2.5}$	12.0 micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 12.0 micrograms per cubic meter.
	35 micrograms per cubic meter 24-hour average concentration. The standard is met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.
Sulfur Dioxide	0.075 parts per million (196 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.075 parts per million, as determined in accordance with 40 CFR 50, Appendix T.
	0.5 parts per million (1,309 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year.
Hydrogen Sulfide	10.0 parts per million (14 milligrams per cubic meter of air), maximum instantaneous (ceiling) concentration not to be exceeded.
	0.20 parts per million (280 micrograms per cubic meter of air), maximum 1-hour average concentration not to be exceeded more than once per month.
	0.10 parts per million (140 micrograms per cubic meter of air), maximum 24-hour average concentration not to be exceeded more than once per year.
	0.02 parts per million (28 micrograms per cubic meter of air), maximum arithmetic mean concentration averaged over three consecutive months.
Carbon Monoxide	9 parts per million (10 milligrams per cubic meter of air), maximum 8-hour concentration not to be exceeded more than once per year.
	35 parts per million (40 milligrams per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year.
Ozone	0.075 parts per million (147 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the 3-year average of the annual fourth-highest daily maximum 8-hour average concentration at an ambient air quality monitoring site is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR 50, Appendix P.
Nitrogen Dioxide	0.053 parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean.

Air Contaminants	Standards (Maximum Permissible Concentrations)
	0.100 parts per million (188 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 parts per million, as determined in accordance with 40 CFR 50, Appendix S.
Lead	0.15 micrograms per cubic meter of air, arithmetic mean averaged over a 3-month rolling period. The standard is met when the maximum 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.

History: Effective January 1, 2019.

Table 2. NATIONAL AMBIENT AIR QUALITY STANDARDS

Air Contaminant	Standards (Maximum Permissible Concentrations)	
Sulfur oxides (sulfur dioxide)	0.030	parts per million (80 micrograms per cubic meter of air) maximum annual arithmetic mean concentration, not to be exceeded in a calendar year.
	0.14	parts per million (365 micrograms per cubic meter of air) maximum 24-hour concentration, not to be exceeded more than once per calendar year.

The standards in Table 2 will remain in effect until one year after the effective date of the designation for the one-hour sulfur dioxide standard pursuant to Section 107 of the Federal Clean Air Act except for areas designated nonattainment with respect to the standards in Table 2 and areas not meeting the requirements of a state implementation call with respect to requirements for the national ambient air quality standards in Table 2. The standards in Table 2 will apply to those areas until that area submits, and the environmental protection agency approves, an implementation plan providing for attainment of the one-hour sulfur dioxide standard.

History: Effective January 1, 2019.

CHAPTER 33.1-15-03
RESTRICTION OF EMMISSION OF VISIBLE AIR CONTAMINANTS

Section
33.1-15-03-01 Restrictions Applicable to Existing Installations
33.1-15-03-02 Restrictions Applicable to New Installations and All Incinerators
33.1-15-03-03 Restrictions Applicable to Fugitive Emissions
33.1-15-03-03.1 Restrictions Applicable to Flares
33.1-15-03-04 Exceptions
33.1-15-03-05 Method of Measurement

33.1-15-03-01. Restrictions applicable to existing installations.

No person may discharge into the ambient air from any single source of emission whatsoever, with the exception of existing incinerators, any air contaminant which exhibits an opacity greater than forty percent except that a maximum of sixty percent opacity shall be permissible for not more than one six-minute period per hour. Provided, however:

1. In consideration of public health and welfare, when it becomes both technically and economically feasible, the source shall comply with visible air contaminant restrictions as outlined in section 33.1-15-03-02 when directed by the department.

2. Any existing source which has installed control technology capable of complying with the visible air contaminant restrictions applicable to new installations shall comply with section 33.1-15-03-02 when directed by the department.

3. If any party is aggrieved by the department's decision as referenced in subsections 1 and 2, that party may request a hearing before the department to review such decision. Such hearing must be conducted according to North Dakota Century Code chapter 28-32. If a hearing is requested, the requirements of section 33.1-15-03-02 are not effective until ordered by the department at the conclusion of the hearing process.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-03-02. Restrictions applicable to new installations and all incinerators.

No person may discharge into the ambient air from any single source of emission whatsoever any air contaminant which exhibits an opacity greater than twenty percent except that a maximum of forty percent opacity is permissible for not more than one six-minute period per hour.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-03-03. Restrictions applicable to fugitive emissions.

No person may discharge into the ambient air from any source of fugitive emissions, as determined or identified by the department, any air contaminant which exhibits an opacity greater than forty percent for more than one six-minute period per hour. Such visible emissions shall have been visibly transported off the property of emission origination and remains visible to an observer positioned off said property when sighting along a line which does not cross the property of emission origination.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-03-03.1. Restrictions applicable to flares.

No person may discharge into the ambient air from any single source of emission whatsoever any air contaminant which exhibits an opacity greater than twenty percent except that a maximum of sixty percent opacity is permissible for not more than one six-minute period per hour.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-03-04. Exceptions.

The provisions of sections 33.1-15-03-01, 33.1-15-03-02, 33.1-15-03-03, and 33.1-15-03-03.1 shall not apply in the following circumstances:

1. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements.

2. When smoke is emitted for the purpose of training or research when approved by the department, including training schools for firefighting personnel.

3. [Reserved].

4. [Reserved].

5. Where fugitive emissions are caused by agricultural activities related to the normal operations of a farm. However, agricultural practices such as tilling of land, application of fertilizers, harvesting of crops, and other activities shall be managed in such a manner as to minimize dust from becoming airborne.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-03-05. Method of measurement.

1. Method 9. Compliance with visible emission standards in chapter 33-15-03 shall be determined by conducting observations in accordance with Reference Method 9 of Appendix A to chapter 33-15-12. Per hour for Reference Method 9 means any contiguous sixty-minute time period. When Reference Method 9 opacity readings are not available, continuous opacity monitors may be substituted. Per hour for monitors means any sixty-minute period commencing on the hour. The results of continuous monitoring by transmissometer, which indicate that the opacity at the time visible emissions were taken, were not in excess of the standard, are probative but not conclusive evidence of the actual opacity of an emission; provided, that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.
2. Method 22. When a visible emissions limit is specified in a permit issued in accordance with this article as zero percent opacity except for a certain frequency, compliance shall be determined using Reference Method 22 of Appendix A to chapter 33-15-12.

History: Amended effective October 1, 1987; April 1, 2014.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33.1-15-04
OPEN BURNING RESTRICTIONS

Section
33.1-15-04-01 Refuse Burning Restrictions
33.1-15-04-02 Permissible Open Burning

33.1-15-04-01. Refuse burning restrictions.

No person may cause, conduct, or permit open burning of refuse, trade waste, or other combustible material, except as provided for in section 33.1-15-04-02 or 33.1-15-10-02, and no person may conduct, cause, or permit the conduct of a salvage operation by open burning.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-04-02. Permissible open burning.

The open burning of refuse or other combustible material may be conducted as specified in this section if the burning is not prohibited by, and is conducted in compliance with, other applicable laws, ordinances, and regulations. Burning is prohibited if the fire index is in the extreme category as issued by the national weather service or if a burning ban is declared by state or local officials. The authority to conduct open burning under this section does not exempt or excuse a person from the consequences, damages, or injuries that may result therefrom.

1. The following types of burning are specifically authorized but are subject to the conditions listed in subsection 2 as well as any condition included as part of this subsection:

    a. Fires purposely set for the instruction and training of public and industrial firefighting personnel.

    b. Fires set for the elimination of a fire hazard that cannot be abated by any other means when authorized by the department or its designee.

    c. Fires set for the removal of dangerous or hazardous material, where there is no other practical or lawful method of disposal and burning is approved in advance by the department. Where there is imminent danger to human health or safety and where there is no other practical or lawful method of disposal, burning may be initiated without prior notice to the department, provided notice is furnished as soon as practical.

    d. Campfires and other fires used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food.

    e. Fires purposely set to forest or rangelands for a specific reason in the management of forest, rangeland, or game in accordance with practices recommended by state or federal agencies, as appropriate, and the burning is approved in advance by the department. The state or federal agency shall, upon request by the department, submit an annual report that estimates the number of acres burned, the fuel loading, and the amount of emissions.

    f. The burning of trees, brush, grass, wood, and other vegetable matter in the clearing of land, right-of-way maintenance operations, and agricultural crop burning.

    g. The burning of refuse and other combustible materials generated in the operation of a domestic household if the following conditions are met:

(1) No collection and disposal service is required or directed by a municipality or other government entity.

(2) The material to be burned is from a building accommodating no more than one family.

(3) The burning is conducted on the property on which the waste is generated.

h. The burning of liquid hydrocarbons that are spilled or lost as a result of pipeline breaks or other accidents involving the transportation of such materials or which are generated as wastes as the result of oil exploration, development, production, refining, or processing operations if the following conditions are met:

(1) The material cannot be practicably recovered or otherwise lawfully disposed of in some other manner.

(2) The burning must be approved in advance by the department, except as provided in subdivision c.

2. The following conditions apply to all types of permissible burning listed in subsection 1.

a. Air pollution, as defined in section 33.1-15-01-04, will not be created.

b. The burning must not be conducted upwind of, or in proximity to, an occupied building such that the ambient air of such occupied building may be adversely affected by the air contaminants being emitted.

c. Care must be used to minimize the amount of dirt on the material being burned and the material must be dry enough to burn cleanly.

d. Oils, rubber, and other materials that produce unreasonable amounts of air contaminants may not be burned.

e. The burning may be conducted only when meteorological conditions favor smoke dispersion and air mixing.

f. The burning must not be conducted adjacent to any highway or public road so as to create a traffic hazard.

g. The burning must not be conducted adjacent to any operational military, commercial, county, municipal, or private airport or landing strip in such a manner as to create a hazard.

h. Except in an emergency, burning may not be conducted in such proximity of any class I area, as defined in chapter 33.1-15-15, that the ambient air of such area is adversely impacted.

i. Except in an emergency, the visibility of any class I area cannot be adversely impacted as defined in chapter 33.1-15-19.

j. Burning activities must be attended and supervised at all times burning is in progress.

k. If state or local fire officials determine conditions to be unsafe for open burning, such burning must cease until conditions are deemed safe by such officials.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-05
EMISSIONS OF PARTICULATE MATTER RESTRICTED

Section
33.1-15-05-01 Restriction of Emission of Particulate Matter From Industrial Processes
33.1-15-05-02 Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating
33.1-15-05-03 Refuse Incinerators
33.1-15-05-03.1 Other Waste Incinerators
33.1-15-05-04 Methods of Measurement

33.1-15-05-01. Restriction of emission of particulate matter from industrial processes.

1. **General provisions.**

   a. This section applies to any operation, process, or activity from which particulate matter is emitted except the burning of fuel for indirect heating in which the products of combustion do not come into direct contact with process materials, the burning of refuse, and the processing of salvable material by burning.

   b. The process weight rate per hour referred to in this section shall be based upon the normal operation maximum capacity of the equipment, and if such normal maximum capacity should be increased by process or equipment changes, the new normal maximum capacity shall be used as the process weight in determining the allowable emissions.

2. **Emission limitations.** No person shall cause, suffer, allow, or permit the emission of particulate matter in any one hour from any source in excess of the amount shown in table 3 for the process weight allocated to such source.

   a. Exceptions.

      (1) [Reserved].

      (2) The department may prescribe air quality control requirements that are more restrictive and more extensive than provided in subsection 2 if the particulate matter emitted is a radioactive, toxic, or deleterious substance which may affect human health or well-being or that would cause significant damage to animal or plant life.

      (3) Any existing emission source which has particulate collection equipment with a collection efficiency of ninety-nine and seven-tenths percent or more by weight shall be considered as meeting the provisions of subsection 2. The efficiency of the particulate collection equipment shall be determined as outlined in section 33.1-15-05-04 with the process being served by the particulate collection equipment being run at normal operation maximum capacity.

      (4) Any portable emission source, not operated at the same premise for more than six months, shall be considered as meeting the provisions of subsection 2 if the source stack or stacks are equipped with particulate collection efficiency of eighty-five percent or more by weight as determined in paragraph 3, and all of the following conditions are met:

         (a) The source must not be located within a city.

         (b) The source must not be located within one-half mile [.80 kilometers] of any occupied residence, and within one mile [1.61 kilometers] of the source there shall be no more than two occupied residences.

(c) The source must not be located within one-quarter mile [.40 kilometers] of any highway or public road.

b. Grievance procedure. If any party is aggrieved by the department's decision as referenced in paragraph 2 of subdivision a, that party may request a hearing before the department to review such decision. Such hearing must be conducted according to North Dakota Century Code chapter 28-32. If a hearing is requested, the requirements of paragraph 2 of subdivision a are not effective until ordered by the department at the conclusion of the hearing process.

Table 3. Maximum Allowable Rates of Emission of Particulate Matter from Industrial Processes

English		Metric	
Process Weight Rate (p)	Allowable Emission Rate (E)	Process Weight Rate (p)	Allowable Emission Rate (E)
tons/hr	lb/hr	metric tons/hr	kg/hr
0.05	0.551	0.045	0.25
0.25	1.62	0.23	0.74
0.50	2.58	0.45	1.16
2.50	7.58	2.27	3.43
5.00	12.05	4.54	5.46
10.00	19.18	9.07	8.67
25.00	35.43	22.68	16.03
50.00	44.58	45.36	20.21
250.00	60.96	226.80	27.65
500.00	68.96	453.59	31.29
1,000.00	77.59	907.19	35.21
2,500.00	90.06	2,267.96	40.87

Interpolation of the data in this table for process weight rates up to 30 tons/hr [27.21 metric tons/hr] shall be accomplished by the use of the equations:

$E = 4.10\ p^{0.67}$ (English units)

$E = 1.98\ p^{0.67}$ (Metric units)

and interpolation and extrapolation of the data for process weight rates in excess of 30 tons/hr [27.21 metric tons/hr] shall be accomplished by the use of the equations:

$E = 55.0\ p^{0.11} - 40$ (English units)

$E = 25.25\ p^{0.11} - 18.2$ (Metric units)

where E = allowable emission rate in lb/hr [kg/hr] and p = process weight rate in tons/hr [metric tons/hr].

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-13; S.L. 2017, ch. 199, § 21

33.1-15-05-02. Maximum allowable emission of particulate matter from fuel burning equipment used for indirect heating.

1. **General provisions.**

   a. This section applies to installations in which fuel is burned for the primary purpose of producing steam, hot water, hot air, or other indirect heating of liquids, gases, or solids and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels include those such as coal, coke, lignite, coke breeze, fuel oil, and wood but do not include refuse. When any products or byproducts of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

   b. The maximum allowable particulate matter which may be emitted from fuel burning units at a source is determined by the maximum or manufacturer's rated heat input of each unit.

   c. Fuel burning equipment that meets the applicability requirements of subdivision a in which a gaseous fuel is burned alone or in combination with other gaseous fuels is exempt from the emission limitations in subsection 2. Fuel burning equipment that burns a gaseous fuel, or fuels, in combination with other fuels is subject to the emission limitations in subsection 2.

2. **Emission limitations.**

   a. Existing installations. No person shall cause or permit the emission of particulate matter, caused by combustion of fuel in any existing fuel burning equipment, from any stack or chimney in excess of eighty-hundredths pounds of particulates per million British thermal units [344 nanograms per joule] heat input. Provided, however, as technology develops for making new control equipment compatible, both technically and economically, with present plants they shall comply with limitations on emissions of particulate matter from fuel burning installations as outlined in subdivision b when directed by the department.

   b. New installations. No person shall cause or permit the emission of particulate matter, caused by the combustion of fuel in any new fuel burning equipment, from any stack or chimney in excess of the quantity set forth in table 4.

   c. Means shall be provided in all newly constructed units and wherever practicable in existing units to allow the periodic measurement of fly ash and other particulate matter.

   d. No person may burn or cause or permit the burning of refuse, including preservative treated wood, in any installation which was designed for the sole purpose of burning fuel unless approved by the department.

   e. Existing or new installations, with a heat input of not more than ten million British thermal units per hour and sources with multiple boilers with a total aggregate heat input of not more than ten million British thermal units per hour, shall be exempt from the applicable allowable emission rate set forth in subdivision a or in table 4, respectively. These sources shall be subject to visible emission and ambient air quality standards.

   f. Any new or existing source whose heat input is greater than two hundred fifty million British thermal units per hour and is equipped with state-of-the-art control technology capable of complying with the particulate emission limitations of subparagraph 1 of

paragraph a of section 60.42 of subpart D of chapter 33.1-15-12 [40 CFR 60.42(a)(1)] shall comply with such limitations when directed by the department.

g. If any party is aggrieved by the department's decision as referenced in subdivision a or f, that party may request a hearing before the department to review such decision. Such hearing must be conducted according to North Dakota Century Code chapter 28-32. If a hearing is requested, the emission limitations as referenced in subdivision a or f (whichever is applicable) are not effective until ordered by the department at the conclusion of the hearing process.

Table 4. Maximum Allowable Rates of Emission of Particulate Matter from New Fuel Burning Equipment

Heat Input (H)	Allowable Emission Rate (E)	Heat Input (H)	Allowable Emission Rate (E)
10^6 Btu/hr	lb/10^6 Btu	joules/hr	nanogram/joule
10 or less	0.600	1.05×10^{10}	258
20	0.548	2.11×10^{10}	235
30	0.519	3.16×10^{10}	224
40	0.500	4.22×10^{10}	215
50	0.486	5.27×10^{10}	209
100	0.444	1.05×10^{11}	191
150	0.421	1.58×10^{11}	181
200	0.405	2.11×10^{11}	174
250	0.394	2.64×10^{11}	169

Interpolation and extrapolation of the data in this table shall be accomplished by the use of equations:

$E = 0.811\ H^{-0.131}$ (English units)

$E = 5{,}307\ H^{-0.131}$ (Metric units)

where E = allowable emission rate in lb/million Btu of heat input [nanogram/joule] and H = heat input in millions of Btu/hr [joules/hr].

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-13; S.L. 2017, ch. 199, § 21

33.1-15-05-03. Refuse incinerators.

1. **Applicability.**

a. The owner or operator of an incinerator of any design capacity for refuse, except trash and refuse derived fuel, must comply with 40 CFR part 60, subpart Ea, which is incorporated by reference in chapter 33.1-15-12.

b. Beginning August 1, 1996, no owner or operator of an incinerator for refuse may incinerate materials of any type or form which are recyclable, unless the owner demonstrates to the department that recycling for a waste material is not reasonably available. Documents subject to state or federal privacy regulations may be incinerated when no other acceptable method of disposal is reasonably available.

c. Beginning August 1, 1997, each existing incinerator for trash must meet the same standards as a new incinerator for trash.

d. As used in this section, "new incinerator" means an incinerator, the construction for which has not been approved by the department prior to August 1, 1995.

2. **Existing trash incinerators.** This subsection applies to any owner or operator of an incinerator for trash of any design capacity existing on August 1, 1995.

a. Prohibited waste. No infectious waste, radioactive waste, hazardous waste, special waste, industrial waste, or any other solid waste may be burned in an incinerator designed for trash unless the incinerator's performance, design, and operating standards for those solid wastes are also met.

b. Operator training. The owner or operator of an incinerator for trash shall provide both written and oral instructions for each operator in the proper operation of the incinerator.

c. Recordkeeping and reporting.

(1) The owner or operator of an incinerator for trash shall keep a log indicating the dates and approximate quantities of waste received from an onsite source, and from each offsite source, including the transporter. The log shall be kept and maintained for a minimum period of three years from the date waste is received.

(2) An owner or operator of an incinerator for trash shall record in the log any operational error or failure of one-hour or more duration of combustion equipment, emission control equipment, waste charging equipment, or monitoring equipment.

(3) When requested by the department, the owner or operator of an incinerator for trash shall provide a summary of the daily burning and hours of operation.

3. **New trash incinerators.** In addition to subsection 2, this subsection applies to an owner or operator of a new incinerator for trash.

a. Design. Each new incinerator for trash must be equipped with a primary combustion chamber or zone which provides complete combustion of solid waste and a secondary combustion chamber or zone which provides turbulent mixing. Auxiliary fuel burners are required in all chambers. The department may approve an alternate design provided the design achieves the performance requirements of this section.

b. Opacity. No owner or operator of a new incinerator for trash may allow to be discharged into the atmosphere any air contaminant which exhibits an opacity greater than ten percent except that a maximum of twenty percent opacity is permissible for not more than one 6-minute period per hour.

c. Operating temperature. Each new incinerator for trash shall maintain the flue gas temperature in the secondary combustion chamber or zone at one thousand five hundred

degrees Fahrenheit [815 degrees Celsius] or greater for a minimum of one-half-second retention time.

d. Monitoring. Each new incinerator for trash shall be equipped with a continuous temperature monitor, with readout, to monitor the temperature of the gases exiting the secondary combustion chamber or zone.

e. Stack height. Each new incinerator for trash shall be equipped with a stack for the discharge of flue gases of sufficient height to prevent ambient concentrations of air contaminants greater than allowed by chapter 33.1-15-02. The minimum stack height is forty feet [12.2 meters] unless it is demonstrated that a stack height less than forty feet [12.2 meters] will meet the standards of chapter 33.1-15-02. The department may require taller stacks when it is necessary to meet the standards of chapter 33.1-15-02.

f. Waste charging.

(1) The waste charging system for a new incinerator for trash must be designed to prevent disruption of the combustion process as waste is charged.

(2) The waste charging system must be designed to prevent overcharging to assure complete combustion. No owner or operator may cause an incinerator for trash to operate at a load greater than one hundred percent of design capacity.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-08, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-05-03.1. Other waste incinerators.

1. **Salvage incinerators.** The department may require construction, operational, and recordkeeping standards and procedures for salvage incinerators. No industrial waste, radioactive waste, hazardous waste, or infectious waste may be burned in a salvage incinerator, unless specifically approved by the department.

2. **Air curtain destructors.** The department may require construction, operational, and recordkeeping standards and procedures for air curtain destructors based upon factors such as characteristics and quantities of materials to be destroyed by burning and site location.

3. **Industrial waste and special waste incinerators.** The department may require construction, operational, emission, monitoring, recordkeeping, and reporting standards and procedures for incinerators of industrial waste based upon factors such as characteristics and quantities of the industrial waste and site location.

4. **Crematoriums.**

a. No owner or operator of combustion units operated as a human or animal crematorium or in an animal farm operation for animal disposal may burn any other type or form of materials or solid waste unless specifically approved by the department.

b. No owner or operator of a crematorium may allow to be discharged into the atmosphere any air contaminant, which exhibits an opacity greater than ten percent except that a maximum of twenty percent is permissible for not more than one 6-minute period per hour.

c. A crematorium constructed and operated after August 1, 1995, must be equipped with two or more chambers and with auxiliary fuel burners, designed to assure a temperature

in a secondary chamber of at least one thousand six hundred degrees Fahrenheit [871 degrees Celsius] for a minimum of one-second retention time.

d. Monitoring. Each new crematorium must be equipped with a continuous temperature monitor, with readout, to monitor the temperature of the gases exiting the secondary combustion chamber or zone. Each human crematorium installed or reinstalled after September 1, 2002, must be equipped with a temperature recorder.

e. Charging. A crematorium must be charged in accordance with the manufacturer's procedures or recommendations. Deviations from these procedures or recommendations are allowed provided credible evidence has been submitted to the department that indicates the deviations will reduce air contaminant emissions. Such evidence shall be provided prior to implementation of the deviations.

f. Operation. Operators of human crematoriums shall be trained in the proper operation of the unit. A copy of the operation and maintenance manual for the unit shall be available onsite. A trained crematorium operator must be onsite at a human crematorium while the cremation process is taking place.

g. General. The department may establish additional construction, operational, emission, monitoring, recordkeeping, and reporting standards and procedures for crematoriums based upon factors such as quantities of material charged, emissions, and site location.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-08, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-05-04. Methods of measurement.

1. The reference methods in appendix A to chapter 33.1-15-12, its replacement or other methods, as approved by the department shall be used to determine compliance with sections 33.1-15-05-01 and 33.1-15-05-02 as follows:

   a. Method 1 for selection of sampling site and sample traverses.

   b. Method 2 for determination of stack gas velocity and volumetric flow rate.

   c. Method 3 for gas analysis.

   d. Method 4 for determination of moisture in the stack gas.

   e. Method 5 for concentration of particulate matter and the associated moisture content. The sampling time for each run shall be at least sixty minutes and the minimum sampling volume shall be thirty dry cubic feet at standard conditions [0.85 dry cubic meter at standard conditions] except that smaller sampling times or volumes when necessitated by process variables or other factors may be approved by the department.

      (1) For each run using method 5 for fuel burning equipment, the emissions expressed in pounds per million British thermal units [nanograms per joule] shall be determined by the following procedures:

$$E = CF_d \left(\frac{20.9}{20.9 - \%O_2}\right) \quad \text{or} \quad E = CF_c \left(\frac{100}{\%CO_2}\right)$$

where:

(a) E = pollutant emission, lb/million Btu [ng/j].

(b) C = pollutant concentration, lb/dscf [ng/dscm].

(c) $\%O_2$ = oxygen content by volume, dry basis.

(d) $\%CO_2$ = carbon dioxide content by volume, dry basis.

The percent oxygen and percent carbon dioxide shall be determined by using the integrated or grab sampling and analysis procedures of method 3, 3A, 3B, or 3C, as appropriate, by traversing the duct at the same sampling locations used for each run of method 5.

(e) F_d and F_c = factors as listed in method 19 appendix A of chapter 33.1-15-12.

(2) For each run using method 5 for industrial processes, the emission rate expressed in pounds per hour shall be determined by the equation lb/hr = (Q_s) (c) where:

Q_s = volumetric flow rate of the total effluent in dscf/hr and

c = particulate concentration in lb/dscf.

2. The heat content of fuels shall be determined in accordance with A.S.T.M. methods D2015-66(72) (solid fuels), D240-64(73) (liquid fuels), or D1826-64(70) (gaseous fuels), as applicable.

3. The determination of particulate matter emissions with an aerodynamic diameter less than or equal to ten micrometers [PM_{10}] and particulate matter emissions with an aerodynamic diameter less than or equal to two and one-half micrometers [$PM_{2.5}$] must be made in accordance with the methods established in 40 Code of Federal Regulations part 51, appendix M, as applicable.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33-15-06. Emissions of Sulfur Compounds Restricted

33-15-06-01. Restriction of emissions of sulfur dioxide from use of fuel.

1. **General provisions**.

a. Except as provided in subdivision c of this subsection, this section applies to any installation in which fuel is burned and in which the sulfur dioxide emissions are substantially due to the content of the fuel burned, and in which the fuel is burned primarily to produce heat.

b. For purposes of this section, a fuel burning installation is any single fuel burning furnace or boiler or other unit, device, or contrivance in which fuel is burned or any grouping of two or more such furnaces or boilers or other units, devices, or contrivances on the same premises or otherwise located in close proximity to each other and under control of the same person. The capacity of such installations shall be the manufacturer's or designer's guaranteed maximum heat input rate.

c. This chapter does not apply to installations which are subject to a sulfur dioxide emission limit under chapter 33-15-12.

d. For purposes of this chapter, equipment at an oil and gas production facility, as defined in chapter 33-15-20, is considered industrial process equipment.

e. This chapter does not apply to installation that burn pipeline quality natural gas or A.S.T.M. commercial propane alone or in combination with each other. Installations that burn pipeline quality natural gas or A.S.T.M. commercial propane in combination with other fuels are subject to the requirements of this chapter.

2. **Restrictions applicable to fuel burning installations**. No person shall cause or permit the emission of sulfur dioxide to the ambient air from any fuel burning installation in an amount greater than three and zero-tenths pounds of sulfur dioxide per million British thermal units [1290 nanograms/joule] of heat input to the installation on a one-hour-block-average basis. The department may establish alternative averaging periods provided the requirements of chapter 33-15-02 are met. All averaging periods must begin on the hour and averaging periods greater than one hour shall be rolling averages.

3. The department shall establish more restrictive emission limits for a source if it is determined that such source is causing the ambient air quality standards of chapter 33-15-02 or the prevention of significant deterioration increments of chapter 33-15-15 for sulfur dioxide to be exceeded. However, the department may consider alternative measures which will achieve compliance with the ambient air quality standards or prevention of significant deterioration increments.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-06-02. Restriction of emissions of sulfur oxides from industrial processes.

1. **General provisions**. This section applies to all emissions except those in which all of the following are met:

a. Fuel is burned primarily to produce heat.

b. The sulfur compound emission is due primarily to the sulfur in the fuel burned.

2. **Concentration of sulfur compounds in emissions restricted**. The department shall establish emission limitations on the amount of sulfur dioxide, sulfur trioxide, and sulfuric acid which may be emitted into the ambient air from any source specified in subsection 1 in any area, if it is determined that such source is causing the ambient air quality standards of chapter 33-15-02 or the prevention of significant deterioration increments of chapter 33-15-15 for sulfur dioxide to be exceeded.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-06-03. Methods of measurement.

Testing must be done in accordance with the provisions of chapter 33-15-12 as applicable. The reference methods in appendix A to chapter 33-15-12, its replacement or applicable alternative methods as approved by the department, shall be used to determine compliance with this chapter as follows:

1. Method 1 for selection of sampling site and sample traverses.
2. Method 2 for stack gas velocity and volumetric flow rate.

3. Method 3 for gas analysis.
4. Method 4 for moisture content.
5. Method 6, 6A, 6C and 20, as applicable, for concentration of sulfur dioxide. The minimum sampling time shall be at least sixty minutes per run and a test shall consist of three runs.
a. For each run using method 6 for fuel burning equipment the emissions expressed in pounds per million British thermal units [nanogram per joule] shall be determined by the following procedures:

$$E = CF\left(\frac{20.9}{20.9 - \%0}\right) \text{ or}$$

$$E = CF_c\left(\frac{100}{\%\ CO_2}\right)$$

where:
(1) E = pollutant emission, lb/million Btu [ng/j].
(2) C = pollutant concentrations, lb/dscf [ng/dscm].
(3) $\%O_2$ = oxygen content by volume, dry basis.
(4) $\%CO_2$ = carbon dioxide content by volume, dry basis.
The percent oxygen and percent carbon dioxide shall be determined by using the integrated sampling and analysis procedures of method 3.
(5) F_d and F_c = factors listed in method 19 of appendix A of chapter 33-15-12.
For facilities firing combinations of fuels the F_d or F_c factors designated in this section shall be prorated in accordance with the applicable formula as follows:

$$F_d = \sum_{i=1}^{n} x_i(F_d)_i \quad \text{or}$$

$$F_c = \sum_{i=1}^{n} x_i(F_c)_i$$

where:
x_i = the fraction of total heat input derived from each type of fuel.
$(F_d)_i$ or $(F_c)_i$ = the applicable F_d or F_c factor for each fuel type.
n = the number of fuels being burned in combination.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-06-04. Continuous emission monitoring requirements.

1. **General provisions**.
a. For sources subject to continuous emission monitoring requirements in their permit to operate, the monitoring systems must be used to demonstrate compliance with emission limits on a continuous basis after the initial compliance test and certification of the system.
b. Emission rates must be recorded in the units of the applicable standard. Conversion of monitor data to an emission rate expressed in pounds per million British thermal units [nanograms per joule] shall be calculated in accordance with the equations in section 33-15-06-03. Equations for calculating emission rates with different units will be supplied by the department.
2. **Installation, operation, and certification**. The installation, operation, and certification of continuous monitoring systems and monitoring devices must comply with the provisions of chapter 33-15-12 that apply to monitoring systems and monitoring devices.
3. **Quality assurance**. All continuous monitoring systems and monitoring devices must be recertified in accordance with the provisions of appendix B of chapter 33-15-12 every three years unless otherwise directed.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-04

33-15-06-05. Reporting and recordkeeping requirements.

1. **Excess emissions reports**. Not later than thirty days following the end of a calendar quarter, any owner or operator required to monitor emissions shall submit a report of excess emissions to the department. The report must include the following information:

a. The magnitude of excess emissions, any conversion factor or factors used, and the date and time of commencement and completion of each time period of excess emissions.

b. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

c. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

d. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired, or adjusted, such information must be stated in the report.

2. **Records**. Any owner or operator subject to continuous emission monitoring requirements shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by the department recorded in a permanent form suitable for inspection. The file must be retained for at least two years following the date of such measurements, maintenance, reports, and records.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-07. Control of Organic Compounds Emissions

33-15-07-01. Requirements for construction of organic compounds facilities.

1. **Scope**. This section applies only to those facilities considered "new" as defined in section 33-15-01-04.
2. **Water separation from petroleum products**. No person may build or install any single or multiple compartment volatile organic compounds - water separator which normally receives effluent water containing two hundred gallons [757.08 liters] per day or more of any volatile organic liquid from any equipment processing, refining, treating, storing, or handling volatile organic compounds unless such compartment is equipped with a closed-vent system and control device as defined in 40 CFR, part 60, subpart QQQ, section 60.691, as adopted in chapter 33-15-12, or a floating roof as described in 40 CFR, part 60, subpart QQQ, section 60.693-2, as adopted in chapter 33-15-12, which is properly installed and in good working order. For the purposes of this section, a volatile organic compounds - water separator means a device used to separate an oil/water mixture into its separate components, which include volatile organic compounds and water, by gravity separation and skimming.
3. **Submerged fill pipes required**. No person may build or install or permit the building or installation of a stationary volatile organic compounds storage tank with a capacity of one thousand gallons [3,785.41 liters] or more unless such tank is equipped with a submerged fill pipe during filling operations or is a pressure tank as described in 40 CFR, part 60, subpart K, subparagraph 60.111(a)(1), as adopted in chapter 33-15-12, or fitted with a vapor recovery system also defined in 40 CFR, part 60, subpart K, paragraph 60.111(k), as adopted in chapter 33-15-12.
4. **Volatile organic compounds loading facilities**. No person may build or install or permit the building or installation of volatile organic compounds tank car or tank truck loading facilities handling twenty thousand gallons [75,708.24 liters] per day or more unless such facilities are operated with a submerged filling arm or other vapor emission control system. Any emissions control system utilized must have a minimum control efficiency necessary to meet the requirements of chapters 33-15-02 and 33-15-16.
5. **Pumps and compressors**. All rotating pumps and compressors handling volatile organic compounds must be equipped and operated with properly maintained seals designed for their specific product service and operating conditions.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-07-02. Requirements for organic compounds gas disposal.

1. No person may cause or permit the emission of organic compounds gases and vapors, except from an emergency vapor blowdown system or emergency relief system, unless the gases and vapors are burned by flares, or an equally effective control device as approved by the department. Minor sources, as determined by the department and not subject to New Source Performance Standards (NSPS), may be granted exemptions to this subsection.
2. Organic compounds gases and vapors which are generated as wastes as the result of storage, refining, or processing operations and which contain hydrogen sulfide, shall be incinerated, flared, or treated in an equally effective manner before being released to the ambient air. The emissions from all devices designed for incinerating, flaring, or treating waste organic compounds gases and vapors shall result in compliance with chapters 33-15-02 and 33-15-16.
3. Each flare required under this section must be equipped and operated with an automatic ignitor or a continuous burning pilot.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-08. Control of Air Pollution from Vehicles and Other Internal Combustion Engines

33-15-08-01. Internal combustion engine emissions restricted.

No person shall operate, or cause to be operated, any internal combustion engine which emits from any source any unreasonable and excessive smoke, obnoxious or noxious gases, fumes or vapor.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-08-02. Removal or disabling of motor vehicle pollution control devices prohibited.

1. No person shall intentionally remove, alter, or otherwise render inoperative, exhaust emission control, crankcase ventilation, or any other air pollution control device which has been installed as a requirement of Federal law or regulation.
2. No person shall operate a motor vehicle originally equipped with air pollution control devices as required by federal law or regulation unless such devices are in place and in operating condition.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-10. Control of Pesticides

33-15-10-01. Pesticide use restricted.

1. No person shall use or permit the use of pesticides in such manner that will cause the airborne drift of pesticides off the premises on which they are being applied in such quantities that cause damage or injury to human health, crops, domestic animals, pollinating insects, vegetation, fish, and wildlife.
2. No person shall aerial spray or permit the aerial spraying of pesticides over a city in the state without the approval of the department. Such spraying will be allowed only for well-thought-out public health purposes and even then only in emergencies or potential emergencies.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-10-02. Restrictions on the disposal of surplus pesticides and empty pesticide containers.

1. No person shall dispose of or permit the disposal of surplus pesticides and empty pesticide containers in such a manner as may cause pesticides to become airborne in such quantities that may cause injury or damage to human health, crops, domestic animals, pollinating insects, vegetation, fish, and wildlife.
2. No person shall dispose of or permit the disposal of surplus pesticides by open burning.
3. Burning of empty pesticide containers is not allowed except where no municipal collection and disposal service is available and all of the following conditions are met:

a. Only plastics composed of carbon, hydrogen, or oxygen may be burned. Plastics composed of polymers of nitrogen, halogens including chlorine, or sulfur may not be burned.
b. The containers must be empty and triple rinsed before being burned. Containers such as bags or liners must be thoroughly emptied of pesticides prior to burning.
c. The open burning must be conducted on the farm by the farmers who generated the empty containers.
d. The open burning shall be conducted in an open area away from buildings and residences, and only when the wind direction disperses the smoke away from any human or animal.
e. Burning may not be conducted by commercial applicators or to dispose of large stockpiles of empty containers.

The authority to conduct such open burning does not exempt or excuse a person from the consequences, damages, or injuries which may result therefrom.

4. The disposal of surplus pesticides and empty pesticide containers must be in accordance with rules promulgated pursuant to authorities of the Solid Waste Management and Land Protection Act and the Hazardous Waste Management Act of the North Dakota Century Code.
5. The handling and disposal of pesticide containers, including burning, must comply with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended October 25, 1988.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-11. Prevention of Air Pollution Emergency Episodes

33-15-11-01. Air pollution emergency.

This chapter is designed to prevent the excessive buildup of air contaminants during air pollution episodes, thereby preventing the occurrence of an emergency due to the effects of these air contaminants on human health.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-11-02. Air pollution episode criteria.

Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the department determines that the accumulation of air contaminants in any place within North Dakota is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to human health. In making this determination, the department will be guided by the criteria listed in table 6.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-11-03. Abatement strategies emission reduction plans.

1. When the department declares an air pollution alert, air pollution warning, or air pollution emergency, any person responsible for the operation of a source of air contaminants as set forth in table 7 shall take all actions as required by table 7 for such source of air contaminants for the level declared and shall put into effect the preplanned abatement strategies plan for the level declared. The department shall notify the public by means of a public announcement whenever an air pollution alert, air pollution warning, or air pollution emergency has been determined to exist.
2. When the department determines that a specified criteria level has been reached at one or more monitoring sites solely because of emissions from a limited number of sources, the department shall notify such source or sources that the actions set forth in table 7 or the preplanned abatement strategies plans are required, insofar as it applies to such source or sources and shall be put into effect until the criteria of the specified level are no longer met.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-11-04. Preplanned abatement strategies plans.

1. Any person responsible for the operation of a source of air contaminants as set forth in table 7 shall prepare abatement strategies plans for reducing the emission of air contaminants during periods of an air pollution alert, air pollution warning, and air pollution emergency. Abatement strategies plans shall be designed to reduce or eliminate emissions of air contaminants in accordance with the objectives set forth in table 7.
2. Any person responsible for the operation of a source of air contaminants not set forth under subsection 1 shall, when requested by the department, in writing, prepare abatement strategies plans for reducing the emission of air contaminants during periods of an air pollution alert, air pollution warning, and air pollution emergency. Abatement strategies plans shall be designed to reduce or eliminate emissions of air contaminants in accordance with the objectives set forth in table 7.
3. Abatement strategies plans as required under subsections 1 and 2 shall be in writing and identify the sources of air contaminants, the approximate amount of reduction of air contaminants, and a brief description of the manner in which the reduction will be achieved during an air pollution alert, air pollution warning, and air pollution emergency.
4. During a condition of air pollution alert, air pollution warning, and air pollution emergency, abatement strategies plans as required by subsections 1 and 2 shall be made available on the premises to any person authorized to enforce the provisions of applicable rules and regulations.
5. Abatement strategies plans as required by subsections 1 and 2 shall be submitted to the department upon request within thirty days of the receipt of such request; such abatement strategies plans shall be subject to review and approval by the department. If, in the opinion of the department an abatement

strategies plan does not effectively carry out the objectives as set forth in table 7, the department may disapprove it, state the reasons for disapproval, and order the preparation of an amended abatement strategies plan within the time period specified in the order.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 23-25-02

Table 6. Air Pollution Episode Criteria.

Table 6

Air Pollution Episode Criteria

1. Air pollution forecast:

An internal watch by the department shall be actuated by a national weather service advisory that an atmospheric stagnation advisory is in effect or the equivalent local forecast of a stagnant atmospheric condition.

2. Air pollution alert:

The alert level is that concentration of contaminants at which first stage control actions are to begin. An alert will be declared when any one of the following levels is reached at any monitoring site:

SO_2-800 Fg/m^3 (0.3 ppm), 24-hour average.

PM_{10} - 350 Fg/m^3, 24-hour average.

CO-17 mg/m^3 (15 ppm), 8-hour average.

Ozone (O_3) - 400 Fg/m^3 (0.2 ppm), 1-hour average.

NO_2 - 1,130 Fg/m^3 (0.6 ppm), 1-hour average; 282 Fg/m^3 (0.15 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours or increase, or in the case of ozone, the situation is likely to recur within the next twenty-four hours unless control actions are taken.

3. Air pollution warning:

The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary. A warning will be declared when any one of the following levels is reached at any monitoring site:

SO_2 - 1,600 Fg/m^3 (0.6 ppm), 24-hour average.

PM_{10} - 420 Fg/m^3, 24-hour average.

CO-34 mg/m^3 (30 ppm), 8-hour average.

Ozone (O_3) - 800 Fg/m^3 (0.4 ppm), 1-hour average.

NO_2 - 2,260 Fg/m^3 (1.2 ppm), 1-hour average; 565 Fg/m^3 (0.3 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours or increase, or in the case of ozone, the situation is likely to recur within the next twenty-four hours unless control actions are taken.

4. Air pollution emergency:

The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary. An emergency will be declared when any one of the following levels is reached at any monitoring site:

SO_2 - 2,100 Fg/m^3 (0.8 ppm), 24-hour average.

PM_{10} - 500 Fg/m^3, 24-hour average.

CO-46 mg/m^3 (40 ppm), 8-hour average.

Ozone (O_3) - 1,000 Fg/m^3 (0.5 ppm), 1-hour average.

NO_2 - 3,000 Fg/m^3 (1.6 ppm), 1-hour average; 750 Fg/m^3 (0.4 ppm), 24-hour average.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours or increase, or in the case of ozone, the situation is likely to recur within the next twenty-four hours unless control actions are taken.

5. Termination:

Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met. At such time, the next lower status will be assumed.

Table 7. Abatement strategies emission reduction plans.

Table 7.

Abatement Strategies Emission Reduction Plans

Air Pollution Alert Level

Part A. General

1. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any form.
2. The use of incinerators for the disposal of any form of solid waste shall be limited to the hours between twelve noon and four p.m.
3. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of twelve noon and four p.m.
4. Persons operating motor vehicles should eliminate all unnecessary operations.

Part B. Source Curtailment

Any person responsible for the operation of a source of air contaminants listed below shall take all required control actions for this alert level.

Source of Air Contaminants	Control Action
1.Coal or oil-fired electric power generating facilities.	a.Substantial reduction by utilization of fuels having low ash and sulfur content. b.Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c.Substantial reduction by diverting electric power generation to facilities outside of alert area.
2.Coal and oil-fired process steam generating facilities.	a.Substantial reduction by utilization of fuels having low ash and sulfur content. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c.Substantial reduction of steam load demands consistent with continuing plant operations.
3. Manufacturing industries of the following classifications: Primary metals industry. Petroleum refining operations. Chemical industries. Mineral processing industries. Grain industry. Paper and allied products. Other energy and fuel facilities.	a. Substantial reduction of air contaminants from manufacturing operationS by curtailing, postponing, or deferring production and all operations. b. Maximum reduction by deferring trade waste disposal operations which emit solid particles, gas vapors and malodorous substances. c. Maximum reduction of heat load demands by processing. d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.

Air Pollution Warning Level

Part A. General

1. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any form.
2. The use of incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited.
3. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of twelve noon and four p.m.

4. Persons operating motor vehicles must reduce operations by the use or car pools and increased use of public transportation and elimination of unnecessary operation.

Part B. Source Curtailment

Any person responsible for the operation of a source of air contaminants listed below shall take all required control actions for this warning level.

Source of Air Contaminants	Control Action
1. Coal or oil-fired electric power generating facilities.	a. Maximum reduction by utilization of fuels having low ash and sulfur content. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Maximum reduction by diverting electric power generation to facilities outside of alert area.
2. Coal and oil-fired process steam generating facilities.	a. Maximum reduction by utilization of fuels having low ash and sulfur content. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Making ready for use a plan of action to be taken if an emergency develops.
3. Manufacturing industries which require considerable lead time for shutdowns including the following classifications: Petroleum refining. Chemical industries. Primary metals industries. Glass industries. Paper and allied products. Other energy and fuel facilities.	a. Maximum reduction of air contaminants from manufacturing operationS by, if necessary, assuming reasonable economic hardships by postponing production and allied operation. b. Maximum reduction by deferring trade waste disposal operations which emit solid particles, gases, vapors or malodorous substances c. Maximum reduction of heat load demands by processing. d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.
4. Manufacturing industries which require relatively short lead times for shutdown including the following classifications: Primary metals industries. Chemical industries. Grain industry. Mineral processing industries.	a. Elimination of air contaminants from manufacturing operations by ceasing, curtailing, postponing, or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment. b. Elimination of air contaminants from industrial waste disposal which emits solid particles, gases, vapors, or malodorous substances. c. Maximum reduction of heat load demands for processing. d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.

Air Pollution Emergency Level

Part A. General

1. There shall be no open burning by any persons of tree waste, vegetation, refuse, or debris in any form.
2. The use of incinerators for the disposal of any form of solid or liquid waste shall be prohibited.
3. All places of employment described below shall immediately cease operations:

a. Mining and quarrying of nonmetallic minerals.

b. All construction work except that which must proceed to avoid emergent physical harm.

c. All manufacturing establishments except those required to have in force an air pollution emergency abatement strategies plan.
d. All wholesale trade establishments; i.e., places of business primary engaged in selling merchandise to retailers, or industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies, except those engaged in the distribution of drugs, surgical supplies and food.
e. All offices of local, county and state government including authorities, joint meetings, and other public bodies excepting such agencies which are determined by the chief administrative officer of local, county, or state government, authorities, joint meetings and other public bodies to be vital for public safety and welfare and the enforcement of the provisions of this order.
f. All retail trade establishments except pharmacies, surgical supply distributors, and stores primary engaged in the sale of food.
g. Banks, credit agencies other than banks, securities and commodities brokers, dealers, exchanges and services; offices of insurance carriers, agents and brokers, real estate offices.
h. Wholesale and retail laundries, laundry services and cleaning and dyeing establishments; photographic studios; beauty shops, barber shops, shoe repair shops.
i. Advertising offices; consumer credit reporting, adjustment and collection agencies; duplicating, addressing, blueprinting; photocopying, mailing, mailing list and stenographic services; equipment rental services, commercial testing laboratories.
j. Automobile repair, automobile services, garages.
k. Establishments rendering amusement and recreational services including motion picture theaters.
l. Elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools, and public and private libraries.
4. All commercial and manufacturing establishments not included in this order will institute such actions as will result in maximum reduction of air contaminants from their operation by ceasing, curtailing, or postponing operations which emit air contaminants to the extent possible without causing injury to persons or damage to equipment.
5. The use of motor vehicles is prohibited except in emergencies with the approval of local police or state highway patrol.
Part B. Source Curtailment
Any person responsible for the operation of a source of air contaminants listed below shall take all required control actions for this emergency level.

Source of Air Contaminants	Control Action
1. Coal or oil-fired electric power generating facilities.	a. Maximum reduction by utilization of fuels having low ash and sulfur content. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Maximum reduction by diverting electric power generation to facilities outside of emergency area.
2. Coal and oil-fired process steam generating facilities.	a. Maximum reduction by reducing heat and steam demands to absolute necessities consistent with preventing equipment damage. b. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing and soot blowing. c. Taking the action called for in the abatement strategies plan for the emergency level.

3. Manufacturing industries of the following classifications: Primary metals industries. Petroleum refining. Chemical industries. Mineral processing industries. Grain industry. Paper and allied products. Other energy and fuel facilities.	a. Elimination of air contaminants from manufacturing operations by ceasing, curtailing, postponing, or deferring production and allied operations to the extent possible without causing injury to persons or damage to equipment. b. Elimination of air contaminants from trade waste disposal processes which emit solid particles, gases, vapors or malodorous substances. c. Maximum reduction of heat load demands for processing. d. Maximum utilization of midday (twelve noon to four p.m.) atmospheric turbulence for boiler lancing or soot blowing.

33-15-14. Designated Air Contaminant Sources Permit to Construct Minor Source Permit to Operate Title V Permit to Operate

33·15-14-01. Designated air contaminant sources.

Pursuant to subsection 1 of North Dakota Century Code section 23-25-04, stationary sources within the following source categories are designated as air contaminant sources capable of causing or contributing to air pollution, either directly or indirectly.

1. The following chemical process facilities:
a. Adipic acid.
b. Ammonia.
c. Ammonium nitrate.
d. Carbon black.
e. Charcoal.
f. Chlorine.
g. Chlor-alkali manufacturing.
h. Detergent and soap.
i. Explosives (trinitrotoluene and nitrocellulose).
j. Hydrochloric acid.
k. Hydrofluoric acid.
l. Nitric acid.
m. Paint and varnish manufacturing.
n. Phosphoric acid.
o. Phthalic anhydride.
p. Plastics manufacturing.
q. Printing ink manufacturing.
r. Sodium carbonate.
s. Sulfur production and recovery.
t. Sulfuric acid.
u. Synthetic fibers.
v. Synthetic rubber.
w. Terephathalic acid.
x. Alcohol.
y. Cresylic acids.
z. Phenol
aa. Polymer manufacturing and coating operations.
2. The following food and agricultural facilities:
a. Agricultural drying and dehydrating operations.
b. Ammonium nitrate.
c. Cheese whey drying and processing.
d. Coffee roasting.
e. Cotton ginning.
f. Feed, grain, and seed handling and processing.
g. Fermentation processes.
h. Fertilizers.
i. Fishmeal processing.
j. Meat smokehouses.
k. Orchard heaters.
l. Potato processing.
m. Rendering plants.
n. Starch manufacturing.
o. Sugarbeet processing.

3. The following metallurgical facilities:
a. Primary metals facilities:
(1) Aluminum ore reduction.
(2) Copper smelters.
(3) Ferroalloy production.
(4) Iron and steel mills.
(5) Lead smelters.
(6) Metallurgical coke manufacturing.
(7) Zinc.
b. Secondary metals facilities:
(1) Aluminum operations.
(2) Brass and bronze smelting.
(3) Ferroalloys.
(4) Ferrous foundries.
(5) Gray iron foundries.
(6) Lead smelting.
(7) Magnesium smelting.
(8) Nonferrous foundries.
(9) Steel foundries.
(10) Zinc processes.
c. Electrolytic plating operations.
4. The following mineral products facilities:
a. Asphalt roofing.
b. Asphaltic concrete plants.
c. Bricks and related clay refractories.
d. Calcium carbide.
e. Ceramic and clay processes.
f. Clay and fly ash sintering.
g. Coal cleaning.
h. Coal drying.
i. Coal mining.
j. Coal handling and processing.
k. Concrete batching.
l. Fiberglass manufacturing.
m. Frit manufacturing.
n. Glass manufacturing.
o. Gypsum manufacturing.
p. Leonardite mining, drying, and processing.
q. Lime manufacturing.
r. Mineral wool manufacturing.
s. Paperboard manufacturing.
t. Perlite manufacturing.
u. Phosphate rock preparation.
v. Portland cement manufacturing, bulk handling, and storage.
w. Rock, stone, gravel, and sand quarrying and processing.
x. Uranium mining, milling, and enrichment.
y. Calciners and dryers.
5. The following energy and fuel facilities:
a. Coal gasification.
b. Coal liquefaction
c. Crude oil and natural gas production.

d. Fossil fuel steam electric plants.
e. Fuel conversion plants.
f. Natural gas processing.
g. Petroleum refining and petrochemical operations.
h. Petroleum storage (storage tanks and bulk terminals).
6. The following wood processing facilities:
a. Plywood veneer and layout operations.
b. Pulpboard manufacturing.
c. Wood pulping.
d. Sawmills.
e. Wood products manufacturing.
7. The following waste management units or facilities:
a. Afterburners.
b. Automobile body incinerators.
c. Conical burners.
d. Flares.
e. Gaseous and liquid organic compounds incinerators.
f. Industrial waste incinerators.
g. Open burning.
h. Open pit incinerators.
i. Infectious waste incinerators.
j. Refuse incinerators.
k. Salvage incinerators.
l. Sewage sludge incinerators.
m. Wood waste incinerators.
n. Municipal waste combustors.
8. The following miscellaneous facilities:
a. Dry cleaning and laundry operations.
b. Fuel burning equipment.
c. Internal combustion engines.
d. Surface coating operations.
e. Wastewater treatment plants.
f. Water cooling towers and water cooling ponds.
g. Stationary gas turbines.
h. Lead acid battery manufacturing.
i. Hydrocarbon contaminated soil remediation projects.
9. Any source for which an applicable federal standard of performance [40 CFR 60] has been adopted in chapter 33-15-12.
10. Any source for which an applicable emission standard for hazardous air [40 CFR 61] has been adopted in chapter 33-15-13.
11. Any source which is subject to review under federal prevention of significant deterioration of air quality regulations (40 CFR 51.166).
12. Any source which is determined by the department to cause or contribute to a violation of any state ambient air quality standard or violates the other provisions of chapter 33-15-02.
13. Any source subject to title V permitting requirements in section 33-15-14-06.
14. Any major source to which a national emission standard for hazardous air pollutants for source categories (40 CFR 63) would apply.
15. Other stationary sources subject to a standard or requirement under the Federal Clean Air Act as amended.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1
Law Implemented: NDCC 23-25-04, 23-25-04.1

33-15-14-01.1 Definitions.

For the purposes of this chapter:

1. "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
2. "Construction, installation, or establishment" means:

a. For sources subject to a standard or requirement under chapters 33-15-13, 33-15-15 (excluding increment consumption by nonmajor sources), and 33-15-22, it shall have the meaning given for construction in each of the respective chapters.

b. For all other sources it means the placement or erection, including fabrication, demolition or modification, of an air contaminant emissions unit and any equipment, process, or structure that will be used to reduce, physically or chemically change, or transmit to the atmosphere any air contaminant. This does not include the building that houses the source, site work, foundations, or other equipment which does not affect the amount, ambient concentration or type of air contaminants that are emitted. With respect to a physical change or a change in the method of operation it means those onsite activities which will affect an existing emissions unit or establishment of a new unit that emits to the atmosphere.

3. "Emissions unit" has the meaning given to it in section 33-15-14-06.
4. "Minor source" means any designated air contaminant source under section 33-15-14-01 which is not required to obtain a title V permit to operate under section 33-15-14-06.
5. "Potential to emit" has the meaning given to it in section 33-15-14-06.
6. "Stationary source" has the meaning given to it in section 33-15-14-06.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-14-02. Permit to construct.

1. **Permit to construct required.**

a. No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter.

b.

c. General permits. The department may issue a general permit to construct covering numerous similar sources which are not subject to permitting requirements under chapter 33.1-15-13 or 33.1-15-15 or subpart B of section 33.1-15-22-03. Any general permit shall comply with all requirements applicable to other permits to construct and shall identify criteria by which sources may qualify for the general permit. A proposed general permit, any changes to a general permit, and any renewal of a general permit is subject to public comment. The public comment procedures under subsection 6 of section 33-15-14-02 shall be used. To sources that qualify, the department shall grant the conditions and terms of the general permit. Sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or apply for an individual permit to construct. Without repeating the public participation procedures under subdivision b of subsection 6, the department may grant a source's request for authorization to construct under the general permit.

2. Application for permit to construct.

a. Application for a permit to construct a new installation or source must be made by the owner or operator thereof on forms furnished by the department.
b. A separate application is required for each new installation or source subject to this chapter.
c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance with this article and will notify the department, in writing, of the startup of operation of such source.

3. **Alterations to source**.

a. The addition to or enlargement of or replacement of or alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.
b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an amount greater than that specified in subdivision a of subsection 5 of section 33-15-14-02 of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted must be considered to be construction, installation, or establishment of a new source, except that:
(1) Routine maintenance, repair, and replacement may not be considered a physical change.
(2) The following may not be considered a change in the method of operation:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source and it is not limited by a permit condition.
(b) An increase in the hours of operation if it is not limited by a permit condition.
(c) Changes from one operating scenario to another provided the alternative operating scenarios are identified and approved in a permit to operate.
(d) Trading of emissions within a facility provided:
[1] These trades have been identified and approved in a permit to operate; and
[2] The total facility emissions do not exceed the facility emissions cap established in the permit to operate.
(e) Trading and utilizing acid rain allowances provided compliance is maintained with all other applicable requirements.
c. Any owner or operator of a source who requests an increase in the allowable sulfur dioxide emission rate for the source pursuant to section 33-15-02-07 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 6.
4. **Submission of plans - Deficiencies in application**. As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.
a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of environmental engineering). These documents are incorporated by reference.
b. Where an air quality impact model specified in the documents incorporated by reference in subdivision a is inappropriate, the model may be modified or another model substituted provided:
(1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.
(2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711).
(3) Written approval from the department must be obtained for any modification or substitution.
(4) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.
5. **Review of application - Standard for granting permits to construct**. The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within thirty days of the receipt of the completed application, make the following preliminary determinations:

a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will cause or contribute to a violation of any applicable ambient air quality standard. A new stationary source will be considered to cause or contribute to a violation of an ambient air quality standard when such source would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable ambient standard:

Contaminant	Averaging Times (hours)				
	Annual (Fg/m3)	24 (Fg/m3)	8 (Fg/m3)	3 (Fg/m3)	1 (Fg/m3)
SO2	1	5		25	7.8
PM10		5			
NO2	1				7.5
CO			500		2000
PM2.5	0.3	1.2			

b. Whether the proposed project will provide all necessary and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.

6. **Public participation - Final action on application**. This subsection shall apply only to those affected facilities designated under chapter 33-15-13, those that will be required to obtain a permit to operate under section 33-15-14-06, for sources which the department has determined to have a major impact on air quality, those for which a request for a public comment period has been received from the public, sources for which a significant degree of public interest exists regarding air quality issues, or those sources which desire a federally enforceable permit which limits their potential to emit. The department shall:

a. Within ninety days of receipt of a complete application, make a preliminary determination concerning issuance of a permit to construct.

b. Within ninety days of the receipt of the complete application, make available in at least one location in the county or counties in which the proposed project is to be located or on the department's website, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.

c. Publish notice to the public by prominent advertisement, within ninety days of the receipt of the complete application, in the region affected, of the opportunity for written comment on the preliminary determinations. The public notice must include the proposed location of the source.

d. Within ninety days of the receipt of the complete application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: The chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

e. Within ninety days of receipt of a complete application, provide a copy of the proposed permit and all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.

f. Allow thirty days for public comment.

g. Consider all public comments properly received, in making the final decision on the application.

h. Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.

i. Take final action on the application within thirty days of the applicant's response to the public comments.

j. Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency, and anyone who requests a copy.

For those sources subject to the requirements of chapter 33-15-15, the public participation procedures under subsection 5 of section 33-15-15-01 shall be followed.

7. **Denial of permit to construct**. If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of any one of subdivision a or b of subsection 5 in the negative, it shall deny the permit and notify the applicant, in writing, of the denial to issue a permit to construct.

If a permit to construct is denied, the construction, installation, or establishment of the new stationary source shall be unlawful. No permit to construct or modify may be granted if such construction, or modification, or installation, will result in a violation of this article.

8. **Issuance of permit to construct**. If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of subdivision a or b of subsection 5 in the affirmative, the department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.

9. **Permit to construct - Conditions**. The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:

a. Sampling, testing, and monitoring of the facilities or the ambient air or both.

b. Trial operation and performance testing.

c. Prevention and abatement of nuisance conditions caused by operation of the facility.

d. Recordkeeping and reporting.

e. Compliance with applicable rules and regulations in accordance with a compliance schedule.

f. Limitation on hours of operation, production rate, processing rate or fuel usage when necessary to assure compliance with this article.

The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. **Scope**.

a. The issuance of a permit to construct for any source does not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting the source.

b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

11. **Transfer of permit to construct**. To ensure the responsible owners or operators, or both, are identified, the holder of a permit to construct may not transfer such permit without prior approval of the department.

12. **[Reserved]**

13. **Exemptions.** A permit to construct is not required for the following stationary sources provided there is no federal requirement for a permit or approval for construction or operation.

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

b. Fossil fuel burning equipment, other than smokehouse generators, which meet all of the following criteria:

(1) The heat input per unit does not exceed ten million British thermal units per hour.

(2) The total aggregate heat input from all equipment does not exceed ten million British thermal units per hour.

(3) The actual emissions, as defined in chapter 33-15-15, from all equipment do not exceed twenty-five tons [22.67 metric tons] per year of any air contaminant and the potential to emit any air contaminant for which an ambient air quality standard has been promulgated in chapter 33-15-02 is less than one hundred tons [90.68 metric tons] per year.

c.

(1) Any single internal combustion engine with less than five hundred brake horsepower, or multiple engines with a combined brake horsepower rating less than five hundred brake horsepower.

(2) Any single internal combustion engine with a maximum rating of less than one thousand brake horsepower, or multiple engines with a combined brake horsepower rating of less than one thousand brake horsepower, and which operates a total of five hundred hours or less in a rolling twelve-month period.

(3) Any internal combustion engine, or multiple engines at the same facility, with a total combined actual emission rate of five tons [4.54 metric tons] per year or less of any air contaminant for which an ambient air quality standard has been promulgated in section 33-15-02-04.

(4) The exemptions listed in paragraphs 1, 2, and 3 do not apply to engines that are a utility unit as defined in section 33-15-21-08.1 or are subject to a standard under chapter 33-15-22.

d. Bench scale laboratory equipment used exclusively for chemical or physical analysis or experimentation.

e. Portable brazing, soldering, or welding equipment.

f. The following equipment:

(1) Comfort air conditioners or comfort ventilating systems which are not designed and not intended to be used to remove emissions generated by or released from specific units or equipment.

(2) Water cooling towers and water cooling ponds unless used for evaporative cooling of process water, or for evaporative cooling of water from barometric jets or barometric condensers or used in conjunction with an installation requiring a permit.

(3) Equipment used exclusively for steam cleaning.

(4) Porcelain enameling furnaces or porcelain enameling drying ovens.

(5) Unheated solvent dispensing containers or unheated solvent rinsing containers of sixty gallons [227.12 liters] capacity or less.

(6) Equipment used for hydraulic or hydrostatic testing.

g. The following equipment or any exhaust system or collector serving exclusively such equipment:

(1) Blast cleaning equipment using a suspension of abrasive in water.

(2) Bakery ovens where the products are edible and intended for human consumption.

(3) Kilns for firing ceramic ware, heated exclusively by gaseous fuels, singly or in combinations, and electricity.

(4) Confection cookers where the products are edible and intended for human consumption.

(5) Drop hammers or hydraulic presses for forging or metal working.

(6) Diecasting machines.

(7) Photographic process equipment through which an image is reproduced upon material through the use of sensitized radiant energy.

(8) Equipment for drilling, carving, cutting, routing, turning, sawing, planing, spindle sanding, or disc sanding of wood or wood products, which is located within a facility that does not vent to the outside air.

(9) Equipment for surface preparation of metals by use of aqueous solutions, except for acid solutions.

(10) Equipment for washing or drying products fabricated from metal or glass; provided, that no volatile organic materials are used in the process and that no oil or solid fuel is burned.

(11) Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents.

h. Natural draft hoods or natural draft ventilators.

i. Containers, reservoirs, or tanks used exclusively for:

(1) Dipping operations for coating objects with oils, waxes, or greases, where no organic solvents are used.

(2) Dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents.
(3) Storage of butane, propane, or liquefied petroleum or natural gas.
(4) Storage of lubricating oils.
(5) Storage of petroleum liquids except those containers, reservoirs, or tanks subject to the air pollution control requirements of chapter 33-15-12. The owner or operator must still provide notification as required in section 33-15-12-02, subpart A.
j. Gaseous fuel-fired or electrically heated furnaces for heat treating glass or metals, the use of which does not involve molten materials.
k. Crucible furnaces, pot furnaces, or induction furnaces, with a capacity of one thousand pounds [453.59 kilograms] or less each, unless otherwise noted, in which no sweating or distilling is conducted, nor any fluxing conducted utilizing chloride, fluoride, or ammonium compounds, and from which only the following metals are poured or in which only the following metals are held in a molten state:
(1) Aluminum or any alloy containing over fifty percent aluminum; provided, that no gaseous chlorine compounds, chlorine, aluminum chloride, or aluminum fluoride are used.
(2) Magnesium or any alloy containing over fifty percent magnesium.
(3) Lead or any alloy containing over fifty percent lead, in a furnace with a capacity of five hundred fifty pounds [249.48 kilograms] or less.
(4) Tin or any alloy containing over fifty percent tin.
(5) Zinc or any alloy containing over fifty percent zinc.
(6) Copper.
(7) Precious metals.
l. Open burning activities within the scope of section 33-15-04-02.
m. Flares used to indicate some danger to the public.
n. Sources or alterations to a source which are of minor significance as determined by the department.
o. Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as defined in section 33-15-14-06.
14. **Performance and emission testing**.
a. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Such tests must be conducted under the owner's or operator's permit to construct, and such permit is subject to the faithful completion of the test in accordance with this article.
b. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to construct must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.
c. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.
d. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative, or from requiring the owner or operator to conduct any test at such time as the department may determine.
15. **Responsibility to comply**.
a. Possession of a permit to construct does not relieve any person of the responsibility to comply with this article.
b. The exemption of any stationary source from the requirements of a permit to construct by reason of inclusion in subsection 13 does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

16. **Portable sources**. Sources which are designated to be portable and which are not subject to the requirements of chapter 33-15-15 are exempt from requirements to obtain a permit to construct. The owner or operator shall submit an application for a permit to operate prior to initiating operations.
17. **Registration of exempted stationary sources**. The department may require that the owner or operator of any stationary source exempted under subsection 13 shall register the source with the department within such time limits and on such forms as the department may prescribe.
18. **Extensions of time**. The department may extend any of the time periods specified in subsections 4, 5, and 6 of section 33-15-14-02 upon notification of the applicant by the department.
19. **Amendment of permits**. The department may, when the public interest requires or when necessary to ensure the accuracy of the permit, modify any condition or information contained in the permit to construct. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, the department will provide:
a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification, and the opportunity for a public hearing, upon request, as well as written public comment.
b. A minimum of a thirty-day period for written public comment, with the opportunity for a public hearing during that thirty-day period, upon request.
c. Consideration by the department of all comments received in its order for modification.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

33-15-14-03. Minor source permit to operate.

1. **Permit to operate required**.
a. Except as provided in subdivisions c and d of this subsection, no person may operate or cause the routine operation of an installation or source designated in section 33-15-14-01 without applying for and obtaining, in accordance with this section, a permit to operate. Application for a permit to operate a new installation or source must be made at least thirty days prior to startup of routine operation. Those sources that received a permit to construct under section 33-15-14-02, need only submit a thirty-day prior notice of proposed startup to satisfy the requirement to apply for a permit to operate under this subdivision.
b. No person may operate or cause the operation of an installation or source in violation of any permit to operate or any condition imposed upon a permit to operate or in violation of this article.
c. Sources that are subject to the title V permitting requirements of section 33-15-14-06 are exempt from the requirements of this
section.
d. Sources that are exempt from the requirement to obtain a permit to construct under subsection 13 of section 33-15-14-02 are exempt from this section.
e. Sources which are subject to the title V permitting requirements in section 33-15-14-06 based solely on their potential to emit, may apply for a federally enforceable minor source permit to operate which would limit their potential to emit to a level below the title V permit to operate applicability threshold.
f. Permits which are issued under this section which do not conform to the requirements of this section, including public participation under subdivision a of subsection 5 of section 33-15-14-03, and the requirements of any United States environmental protection agency regulations may be deemed not federally enforceable by the United States environmental protection agency.
g. General permits: The department may issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other minor source permits to operate and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or apply for an individual minor source permit to operate. Without repeating the public participation procedures

under subsection 5 of section 33-15-14-03, the department may grant a source's request for authorization to operate under a general permit.

2. **Application for permit to operate**.

a. Application for a permit to operate must be made by the owner or operator thereof on forms furnished by the department.

b. Each application for a permit to operate must be accompanied by such performance tests results, information, and records as may be required by the department to determine whether the requirements of this article will be met. Such information may also be required by the department at any time when the source is being operated to determine compliance with this article.

c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the operation of the installation or source in accordance with this article.

3. **Standards for granting permits to operate**. No permit to operate may be granted unless the applicant shows to the satisfaction of the department that the source is in compliance with this article.

4. **Performance testing**.

a. Before a permit to operate is granted, the applicant, if required by the department, shall conduct performance tests in accordance with methods and procedures required by this article or methods and procedures approved by the department. Such tests must be made at the expense of the applicant. The department may monitor such tests and may also conduct performance tests.

b. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Issuance of a minor source permit to operate is subject to the faithful completion of the test in accordance with this article.

c. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to operate must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.

d. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.

e. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative or from requiring the owner or operator to conduct any test at such time as the department may determine.

5. **Action on applications**.

a. Public participation: This subdivision is applicable to only those sources which apply for a federally enforceable minor source permit to operate which limits their potential to emit an air contaminant. The department shall:

(1) Within ninety days of receipt of a complete application:

(a) Make a preliminary determination concerning issuance of the permit to operate.

(b) Make available in at least one location in the county or counties in which the source is located or on the department's website, a copy of the proposed permit and copies of or a summary of the information considered in developing the permit.

(c) Publish notice to the public by prominent advertisement, in the region affected, of the opportunity for written comment on the proposed permit. The public notice must include the proposed location of the source.

(d) Provide notice of the proposed permit and public notice to any state or federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions. For purposes of this subparagraph, lands will be considered to be significantly affected if the source is located within thirty-one and seven hundredths miles [50 kilometers] of such land.

(e) Provide a copy of the proposed permit, all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.
(2) Allow thirty days for public comment.
(3) Consider all public comments properly received, in making the final decision on the application.
(4) Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.
(5) Take final action on the application within thirty days of the applicant's response to the public comments.
(6) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency and anyone who requests a copy.
b. For those sources not subject to public participation under subdivision a of this subsection, the department shall act within thirty days after receipt of an application for a permit to operate a new installation or source, and within thirty days after receipt of an application to operate an existing installation or source, and shall notify the applicant, in writing, of the approval, conditional approval, or denial of the application.
c. The department shall set forth in any notice of denial the reasons for denial. A denial must be without prejudice to the applicant's right to a hearing before the department or for filing a further application after revisions are made to meet objections specified as reasons for the denial.
6. **Permit to operate - Conditions**. The department may impose any reasonable conditions upon a permit to operate. All emission limitations, controls, and other requirements imposed by conditions on the permit to operate must be at least as stringent as any applicable limitation or requirement contained in this article. Permit to operate conditions may include:
a. Sampling, testing, and monitoring of the facilities or ambient air or both.
b. Trial operation and performance testing.
c. Prevention and abatement of nuisance conditions caused by operation of the facility.
d. Recordkeeping and reporting.
e. Compliance with applicable rules and regulations in accordance with a compliance schedule.
f. Limits on the hours of operation of a source or its processing rate, fuel usage or production rate when necessary to assure compliance with this article.
7. **Suspension or revocation of permit to operate**.
a. The department may suspend or revoke a permit to operate for violation of this article, violations of a permit condition or failure to respond to a notice of violation or any order issued pursuant to this article.
b. Suspension or revocation of a permit to operate shall become final ten days after serving notice on the holder of the permit.
c. A permit to operate which has been revoked pursuant to this article must be surrendered forthwith to the department.
d. No person may operate or cause the operation of an installation or source if the department denies or revokes a permit to operate.
8. **Transfer of permit to operate**. The holder of a permit to operate may not transfer it without the prior approval of the department.
9. **Renewal of permit to operate**. Every permit to operate issued by the department after February 9, 1976, must have a maximum term of five years. Applications for renewal of such permits must be submitted ninety days prior to the expiration date stated in the permit. The department shall approve or disapprove such application within ninety days. If a source submits a complete application for a permit renewal at least ninety days prior to the expiration date, the source's failure to have a minor source permit to operate is not a violation of this section until the department takes final action on the renewal application.

10. **[Reserved]**

11. **[Reserved]**
12. **Responsibility to comply**.
a. Possession of a minor source permit to operate does not relieve any person of the responsibility to comply with this article.
b. The exemption of any stationary source from the requirements to obtain a minor source permit to operate does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.
13. **Portable sources**. Sources which are designed to be portable and which are operated at temporary jobsites across the state may not be considered a new source by virtue of location changes. One application for a permit to operate any portable source may be filed in accordance with this chapter, and subsequent applications are not required for each temporary jobsite. The permit to operate issued by the department shall be conditioned by such specific requirements as the department deems appropriate to carry out the provisions of sections 33-15-01-07 and 33-15-01-15.
14. **Registration of exempted stationary sources**. The department may require that the owner or operator of any stationary source exempted from the requirement to obtain a minor source permit to operate to register the source with the department within such time limits and on such forms as the department may prescribe.
15. **Extensions of time**. The department may extend any of the time periods specified in this section upon notification of the applicant by the department.
16. **Amendment of permits**. When the public interest requires or when necessary to ensure the accuracy of the permit, the department may modify any condition or information contained in a minor source permit to operate. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would be a major modification as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, or modify a condition which limits the potential to emit of a source which possesses a federally enforceable permit, the department will provide:
a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification and the opportunity for a public hearing, upon request, as well as written public comment.
b. A minimum of a thirty-day period for written public comment with the opportunity for a public hearing during that thirty-day period, upon request.
c. Consideration by the department of all comments received.
The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.
General Authority: NDCC 23-25-03, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-03, 23-25-04.1, 23-25-04.2

33-15-14-07. Source exclusions from title V permit to operate requirements.

1. **Purpose.** The purpose of this section is to clarify which sources are minor sources with respect to section 33-15-14-06. The owner or operator of any source that would be classified as a major source under section 33- 15-14-06 and which is not specifically excluded by this section shall comply with the requirements of section 33-15-14-06.
2. **Definitions**. For purposes of this section:
a. "Bulk gasoline plant" means any bulk gasoline distribution facility that has a gasoline throughput less than or equal to twenty thousand gallons [75700 liters] per day and that receives gasoline by truck rather than by rail.
b. "Coatings" means coatings plus diluents plus cleanup solvents.

c. "Fountain solution additives" includes isopropyl alcohol, n-propyl alcohol, n-butanol, and alcohol substitutes.
d. "Hazardous air contaminant" means any air contaminant listed pursuant to subsection 112(b) of the Federal Clean Air Act.
e. "Refueling positions" means the number of vehicles that could be dispensing simultaneously at a gasoline service station.
3. **Applicability**.
a. The owner or operator of the following stationary sources is not required to obtain a title V permit to operate under section 33-15-14-06 if the conditions of this section are met:
(1) Gasoline service stations.
(2) Gasoline bulk plants.
(3) Coating sources.
(4) Printing, publishing, and packaging operations.
(5) Degreasers using volatile organic solvents.
(6) Hot mix asphalt plants.
b. Any facility obtaining coverage under this section must submit a notification in writing to the department within ninety days of publication of this section unless specifically exempted from this requirement in the applicable subdivision of this section. The notification must contain the following information:
(1) Facility name, location, and nature of business.
(2) A list of all the sources of air contaminants at the facility.
(3) The condition of this section which is applicable to the facility.
(4) Total material usage, source capacity, or throughput for the previous month or twelve months at the facility, in accordance with the subdivision that is applicable to the facility.
(5) A signed statement accepting the throughput or usage limitation.
c. Complying with the conditions of this section does not exempt the owner or operator of a facility from the obligation to apply for and obtain a permit to construct or a minor source permit to operate unless specifically exempted in section 33-15-14-02 or 33-15-14-03.
d. The owner or operator of any facility listed in subdivision a which has potential emissions that would classify it as a major source even after the conditions of this section are met, or are not able to comply with the applicable conditions, shall obtain a title V permit to operate or a minor source permit to operate which limits the potential to emit of the source to a level below the major source threshold.
e. Complying with the conditions of this section does not relieve the owner or operator of a source of the responsibility to comply with any other applicable requirements of this article.
f. If the facility deviates from any condition, limit, or requirement of this section, a report must be submitted to the department within thirty days of the deviation containing the following information:
(1) The facility's name and location.
(2) Applicable condition, limit, or requirement for the facility for which a deviation occurred.
(3) A summary of the records showing the deviation, accompanied by an explanation of the deviation.
(4) A plan of action to prevent future occurrences of any deviation at the facility.
g. All records required by this section must be maintained for a period of five years from the last date of entry. The records must be available for inspection or submittal to the department upon request. If a facility is limited by a material usage, capacity, or throughput based on a twelve- month rolling period, a log must be updated monthly to include the previous twelve months' total material usage, capacity, or throughput.
4. **Exclusion standards**.
a. Gasoline service stations. The owner or operator of sources where gasoline dispensing operations account for more than ninety percent of all emissions from the facility is not required to obtain a title V permit to operate if the following conditions are met.
(1) No vapor recovery is used:

(a) The source's total sales of gasoline must not exceed three hundred eighty thousand gallons [1438300 liters] per month in any calendar month. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.
(b) If the number of refueling positions is no more than seventeen at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.
(2) Stage I vapor recovery is used:
(a) The source's total sales of gasoline must not exceed six hundred thirty thousand gallons [2384800 liters] per month in any calendar year. To demonstrate compliance with this limit, monthly records of throughput must be maintained at the source.
(b) If the number of refueling positions is no more than twenty-nine at the source, then the source is exempt from formal application to the department under subdivision b of subsection 3.
b. Gasoline bulk plants. The owner or operator of gasoline bulk plants where gasoline loading and unloading operations account for more than ninety percent of all emissions from the source are covered by this subdivision. To demonstrate compliance with the twenty thousand gallons [75700 liters] per day of gasoline definition of a bulk plant, monthly records of throughput must be maintained at the source.
c. Coating sources.
(1) The owner or operator of sources where surface coating operations account for more than ninety percent of all hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in subparagraph a or b are met.
(a) The source's total usage of surface coatings must not exceed two hundred fifty gallons [946.25 liters] of coatings per month in any calendar month nor exceed three thousand gallons [11355 liters] of coatings per twelve-month period. The coatings are limited to six pounds per gallon [719 grams per liter] of any individual hazardous air contaminant. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(b) The source's total hazardous air contaminant emissions shall not exceed ten tons per twelve-month period. Hazardous air contaminant emissions must be calculated by multiplying the surface coating material usage in gallons by the individual hazardous air contaminant content in pounds per gallon. To demonstrate compliance with the emissions limitation, the emissions must be calculated on a monthly basis and recorded in a log. All records of material usage, hazardous air contaminant content and emissions must be maintained at the facility.
(2) The owner or operator of an automobile refinishing shop where operations account for more than ninety percent of volatile organic compound emissions and hazardous air contaminant emissions is not required to obtain a title V permit to operate if the usage of coatings is less than two hundred fifty gallons [946.25 liters] per month or three thousand gallons [11355 liters] of coatings per twelve-month period. This item does not apply to facilities capable of refinishing vehicles other than automobiles or trucks. Sources are exempt from the notification requirements under subdivision b of subsection 3 if:
(a) The auto refinishing shop business is entirely, or almost entirely, for collision repairs and the business has two or fewer bays;
(b) Substantial portions of the auto refinishing shop business are devoted to repainting entire vehicles and the business only has one bay devoted to painting; or
(c) The auto refinishing shop business does not have the physical or operational capability to do more than fifty jobs per week.
d. Printing, publishing, and packaging operations.
(1) The owner or operator of facilities where sheetfed (nonheatset) offset lithography or nonheatset web offset lithography printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
(a) The facility must use less than fourteen thousand two hundred seventy-five gallons [54030 liters] of cleaning solvent and fountain solution additives in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To

demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(2) The owner or operator of facilities where heatset web offset lithography printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
(a) The facility must use less than one hundred thousand pounds [45.36 megagrams] of ink, cleaning solvent, and fountain solution additives in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(3) The owner or operator of facilities where screen printing operations are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
(a) The facility must use less than fourteen thousand two hundred seventy-five gallons [54030 liters] of the sum of solvent-based inks, cleaning solvents, adhesives, and coatings in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(4) The owner or operator of facilities, where flexography or rotogravure printing operations with water-based or ultraviolet-cured inks, coatings, and adhesives are conducted, is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
(a) The facility must use less than four hundred thousand pounds [181 megagrams] of the sum of solvent-based inks, cleaning solvents, and adhesives in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(5) The owner or operator of facilities where flexography or rotogravure printing operations with solvent inks are conducted is not required to obtain a title V permit to operate if the conditions in subparagraphs a, b, and c are met.
(a) The facility must use less than one hundred thousand pounds [45.36 megagrams] of the sum of ink, coatings, adhesives, dilution solvents and cleaning solvents in any twelve- month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.

(b) The facility must use less than three thousand three hundred thirty-three gallons [12615 liters] of materials containing multiple hazardous air contaminants in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
(c) The facility must use less than one thousand three hundred thirty-three gallons [5045 liters] of material containing any individual hazardous air contaminant in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of material usage must be maintained at the facility.
e. Degreasers using volatile organic solvents. The owner or operator of facilities where degreasing operations account for more than ninety percent of all volatile organic compound emissions and hazardous air contaminant emissions from the facility is not required to obtain a title V permit to operate if the conditions in paragraph 1 or 2 are met.
(1) If non-halogenated solvents are used, the usage is limited to two thousand two hundred gallons [8327 liters] of any one solvent-containing material and five thousand four hundred gallons [20439 liters] of any combination of solvent-containing materials in any twelve month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.
(2) If halogenated solvents are used, including methyl chloroform, trichloroethane, and methylene chloride, the usage is limited to one thousand two hundred gallons [4542 liters] of any one solvent-containing material and two thousand nine hundred gallons [10976 liters] of any combination of solvent-containing materials in any twelve-month rolling period. To demonstrate compliance with the usage limit, monthly records of solvent usage must be maintained at the facility.
f. Hot mix asphalt plants. The owner or operator of facilities where hot mix asphalt production operations account for more than ninety percent of all emissions from the facility, is not required to obtain a title V permit to operate if the amount of hot mix asphalt produced does not exceed two hundred fifty thousand tons [226757 metric tons] in any twelve-month rolling period. To demonstrate compliance with this limit, monthly records of hot mix asphalt produced must be maintained at the facility. Sources that are excluded under this subdivision must obtain a minor source permit to operate under section 33-15-14-03.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.

33-15-15. Prevention of Significant Deterioration of Air Quality

33-15-15-01.1. Purpose.

The purpose of this chapter is to adopt by reference federal provisions for the prevention of significant deterioration program in North Dakota. The department will continue to implement the prevention of significant deterioration program as part of the state implementation plan.

General Authority: NDCC 23-25-03, 23-25-04.1

Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-01.2. Scope.

The provisions of 40 Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa), and (bb) as they exist on July 1, 2018, are incorporated by reference into this chapter. This includes revisions to the rules that were published as a final rule in the Federal Register by this date but had not been published in the Code of Federal Regulations yet. Any changes or additions to the provisions are listed below the affected paragraph.

For purposes of this chapter, administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties listed below, or any others that cannot be delegated, administrator means the administrator of the United States environmental protection agency:

(b)(17) - Definition of federally enforceable.

(b)(37)(i) - Definition of repowering.

(b)(43) - Definition of prevention of significant deterioration.

(b)(48)(ii)(c) - Definition of baseline actual emissions.

(b)(50)(i) - Definition of regulated NSR pollutant.

(1)(2) - Air quality models.

(p)(2) - Consultation with the federal land manager.

For purposes of this chapter, permit or approval to construct means a permit to construct. The procedures for obtaining a permit to construct are specified in section 33-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term "40 CFR 52.21" is replaced with "this chapter".

40 CFR , 52.21(b)(1)	The following is added: For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).
40CFR 52.21 (b)(2)	The following is added: For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR86.1818-12(a).

40 CFR 52.21(b)(2)(iii)(a)	The following is deleted: Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc).
40 CFR 52.21(b)(3)(iii)(a)	The words "the administrator or other reviewing authority" are replaced with "the department or the administrator of the United States environmental protection agency".
40 CFR 52.21(b)(14)	The following is added: (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.
40 CFR 52.21(b)(15)	The following is added: (iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of region no. 130, the metropolitan Fargo-Moorhead interstate air quality control region; and region no. 172, the North Dakota intrastate air quality control region (the remaining fifty-two counties).

40 CFR 52.21(23)(i)	The following is added: Greenhouse gases: 75,000 tpy CO_2 equivalent.
40 CFR 52.21(b)(22)	The following is added: Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
40 CFR 52.21(b)(29)	The following is added: This term does not include effects on integral vistas.
40 CFR 52.21(b)(30)	The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".
40 CFR 52.21(b)(43)	The paragraph is deleted in its entirety and replaced with the following:

40 CFR 52.21(b)(48)(ii)	The following words are deleted: "by the administrator for a permit required under this section or".
40 CFR 52.21(b)(49)	The following words are deleted "administrator in subchapter C of this chapter" and replaced with the following: Administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I subchapter C.
40 CFR 52.21(b)(49)(i)	"§ 86.181-12(a) of this chapter" is deleted and replaced with: 40 CFR 86.1818-12(a).
40 CFR 52.21(b)(49)(ii)(a)	"Table A-1 to subpart A of part 98 of this chapter" is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1. The following is deleted: For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).
40 CFR 52.21(b)(50)(i)(c)	This paragraph is deleted in its entirety and replaced with the following: Nitrogen oxides are a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.
40 CFR 52.21(b)(50)(i)(d)	This paragraph is deleted in its entirety and replaced with the following: Volatile organic compounds are not a precursor to $PM_{2.5}$ in any attainment or unclassifiable areas.
40 CFR 52.21(b)(51)	The paragraph is deleted in its entirety and replaced with the following: Reviewing authority means the department.
40 CFR 52.21(b)(53)	This paragraph is deleted in its entirety and replaced with the following: Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.

40 CFR 52.21(b)(54) This paragraph is deleted in its entirety and replaced with the following:

Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.

40 CFR 52.21(b)(58) This paragraph is deleted in its entirety.

40 CFR 52.21(d) The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed:

(1) The concentration permitted under the national primary and secondary ambient air quality standards.

(2) The concentration permitted by the ambient air quality standards in chapter 33-15-02.

40 CFR 52.21(e) The following is added:

(5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.

40 CFR 52.21(h) The paragraph is deleted and replaced with the following:

The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.

40 CFR 52.21(i) The following subparagraphs are added:

(11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.

(12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

40 CFR 52.21(k)(1) This subparagraph is deleted and replaced with the following:

(1) Any national ambient air quality standard or any standard in chapter 33-15-02.

40 CFR 52.21(l)(1) — This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix w of 40 CFR 51 ("guideline on air quality models" as it exists on July 1, 2018) as supplemented by department guidance. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.

40 CFR 52.21(m)(3) — "Appendix B to part 58 of this chapter" is replaced with 40 CFR 58, appendix B.

40 CFR 52.21(p)(6) — "paragraph (q)(4)" is replaced with "paragraph (p)(4)" and "(q)(7)" is replaced with "(p)(7)".

40 CFR 52.21(p)(7) — "paragraph (q)(7)" is replaced with "paragraph (p)(7)".

40 CFR 52.21(p)(8) — "paragraphs (q)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)".

40 CFR 52.21(p) — The following is added:

(9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.

40 CFR 52.21(q) — This paragraph is deleted and replaced with the following:

q. Public participation.

(1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant

as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.

(2) With respect to a completed application, the department shall:

(a) Within one year after receipt, make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

(b) Make available, in at least one location in each region in which the proposed source or modification would be constructed or on the department's website, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.

(c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least thirty days for public comment.

(d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.

(e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists

or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

(f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than thirty days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The department may extend the time to respond to comments based on a written request by the applicant. The department shall consider the applicant's response in making its final decision. All comments must be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.

(g) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

(h) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

40 CFR 52.21(r)(2) The following is added:

In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

40 CFR 52.21(v)(1) This subparagraph is deleted and replaced with the following:

(1) An owner or operator of any proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

40 CFR 52.21(v)(2)(iv)(a)

This subitem is deleted and replaced with the following:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard or any ambient air quality standard in chapter 33-15-02; or

40 CFR 52.21(w)(1)

This subparagraph is deleted and replaced with the following:

(1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

40 CFR 52.21(aa)(15)

This paragraph is deleted in its entirety

History: Effective February 1, 2005; amended effective April 1, 2009; April 1, 2011; January 1, 2013.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-15-02. Reclassification.

1. Reclassification of areas. All areas (except as otherwise provided under 40 CFR 52.21(e)) must be designated either class I, class II, or class III . Any designation other than class II is subject to the redesignation procedures of this section. Redesignation (except as otherwise precluded by 40 CFR 52.21(e)) is subject to approval by the administrator of the United States environmental protection agency.

a. Reclassification by petition.

(1) Filing of petition. After twenty percent of the qualified electors in any county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, shall petition the department to reclassify any area within such county (except as precluded by 40 CFR 52.21(e)) to class I, class II, or class III, the department shall hold a hearing and take such other action as specified in subsection 3. The department shall reclassify the area proposed in the petition for reclassification only if such reclassification is substantially supported by the hearing record.

(2) Contents of petition . The petition to reclassify any area to either class I, class II, or class I11 must contain a legal description of the area which the petition is to affect; an explanation of the meaning and purpose of the petition and reclassification; a statement to the effect that those persons signing the petition desire the described area to be reclassified to either class I, class II, or class III and such statement must specify which class; a list of those persons or person circulating such petition, which persons must be designated "Committee of Petitioners"; an affidavit to be attached to each petition and sworn to under oath before a notary public by the person circulating each petition attesting to the fact that the person circulated such petition and that each of the signatures to such petition is the genuine signature of the person whose name it purports to be, and that each such person is a qualified elector in the county in which the petition was circulated ; all petitions' signatures must be numbered and dated by month, day, and year, and the name must be written with residence address and post-office address including the county of residence followed by state of North Dakota.

b. Reclassification upon department's own motion. At such time as the department may determine, it may hold a public hearing and take such other action as specified in subsection 2 in order to reclassify any area of this state (except as precluded by 40 CFR 52.21(e)) to class I, class 11, or class 111. The department shall reclassify the area proposed for reclassification only if such reclassification is substantially supported by the hearing record.

2. Procedures for reclassification.

a. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to either class I or class II pursuant to subdivisions a and b of subsection 1, provided that:

(1) At least one public hearing is held in or near the area affected and this public hearing is held in accordance with the procedures established in subsection 3.

(2) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation are notified at least thirty days prior to the public hearing.

(3) A discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation is prepared and made available for public inspection at least thirty days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion.

(4) Prior to the issuance of notice respecting the redesignation of any area that includes any federal lands, the state shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty days) to confer with the state respecting the redesignation and to submit written comments and recommendations with respect to such redesignation. In redesignating any area with respect to which any federal land manager has submitted written comments and recommendations, the state shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager).

(5) The proposed redesignation is based on the record of the state's hearing, which must reflect the basis for the proposed redesignation, including consideration of:

(a) Growth anticipated in the area.

(b) The social, environmental, health, energy, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and states.

(c) Any impacts of such proposed redesignation upon regional or national interests . Anticipated growth shall include growth resulting both directly and indirectly from proposed development.

(6) The redesignation is proposed after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

b. Except as precluded by 40 CFR 52.21(e), the department may reclassify any area of this state, including any federally owned lands, but excluding lands within the exterior boundaries of any Indian reservations, to class III if:

(1) Such redesignation would meet the requirements of subdivision a.

(2) Such redesignation has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislative assembly if it is in session or with the leadership of the legislative assembly if it is not in session, and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation or pass resolutions concurring the state's redesignation.

(3) Such redesignation will not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area, or any applicable ambient air quality standard.

(4) Prior to any public hearing on redesignation of any area, there must be available, insofar as is practicable for public inspection, any specific plans for any new major stationary source or major modification which may be permitted to be constructed and operated only if the area in question is redesignated as class III.

3. Reclassification hearings.

a. Any hearing required by subsection 2 shall be held only after reasonable notice, which shall be considered to include, at least thirty days prior to the date of such hearing:

(1) Notice given to the public by prominent advertisement in the region affected announcing the date, time, and place of such hearing.

(2) Availability of each proposed plan or revision for public inspection in at least one location in each region to which it will apply, and the availability of each compliance schedule for public inspection in at least one location in the region in which the affected source is located.

(3) Notification to the administrator of the United States environmental protection agency (through the appropriate regional office).

(4) Notification to each local air pollution control agency in each region to which the plan, schedule, or revision will apply.

(5) In the case of an interstate region, notification to any other states included, in whole or in part, in the region .

(6) Notification to any states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation.

b. The department shall prepare and retain for inspection a record of each hearing. The record must contain, as a minimum, a list of witnesses together with the text of each presentation.

c. Any hearing held pursuant to the provisions of this subsection must be held only for the purpose of considering such reclassification as has been noticed under the provisions of subsection 2, and consideration of reclassification to other classes not so noticed shall not be allowed.

d. Any hearing held pursuant to these provisions may be continued for such purposes and for such periods of time as the department may determine.

4. Time limitation. Notwithstanding any other regulation herein, the department shall rule upon any proposed reclassification within eighteen months of the official public notification of such proposed redesignation by the department.

History: Amended effective July 1, 1982; October 1, 1987; January 1, 1989; February 1, 2005.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-17. Restriction of Fugitive Emissions

33-15-17-01. General provisions - Applicability and designation of affected facilities.

1. The provisions of this chapter apply to the owner or operator of any source of fugitive emissions whatsoever.
2. No person shall cause or permit fugitive emissions from any source whatsoever, including a building, its appurtenances, or a road, to be used, constructed, altered, repaired, or demolished; or activities such as loading, unloading, storing, handling, or transporting of materials without taking reasonable precautions to prevent such emissions from causing air pollution as defined in section 33-15-01-04.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-17-02. Restriction of fugitive particulate emissions.

No person shall emit or cause to be emitted into the ambient air from any source of fugitive emissions as specified in section 33-15-17-01 any particulate matter which:

1. [Reserved]
2. Exceed the ambient air quality standards of chapter 33-15-02 at or beyond the property line of the source.
3. Exceed the prevention of significant deterioration of air quality increments of chapter 33-15-15 at or beyond the property line of the source for sources subject to chapter 33-15-15.
4. Exceed the restrictions on the emission of visible air contaminants of chapter 33-15-03, at or beyond the property line of the source.
5. Would have an adverse impact on visibility, as defined in chapter 33-15-19, on any class I federal area.
6. Agricultural activities related to the normal operations of a farm shall be exempt from the requirements of this section. However, agricultural practices such as tilling of land, application of fertilizers, and the harvesting of crops shall be managed in such a manner as to minimize dust from becoming airborne.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

R23-25-17.300. Reasonable precautions for abating and preventing fugitive particulate emissions.

17.310. Unpaved Roads and Unpaved Parking Areas. Abatement and preventive measures include but shall not be limited to frequent watering, addition of dust palliatives, detouring, paving, closure, speed control, or other means such as surface treatment with penetration chemicals (ligninsulfonates, oil, water, cutbacks, etc.) or methods of equal or greater effectiveness in reducing the air contaminant produced.

17.320. Demolition, Wrecking and Explosive Detonation Activities; Earth and Construction Material Moving, Mining, and Excavation Activities.

17.321. Abatement and preventive fugitive particulate control measures include, but are not limited to:

(1) Wetting down, including prewatering.
(2) Landscaping and replanting with native vegetation.
(3) Covering, shielding or enclosing the area.
(4) Paving, temporary or permanent.
(5) Treating, the use of dust palliatives and chemical stabilization.
(6) Detouring.
(7) Restricting the speed of vehicles on sites.
(8) Preventing the deposit of dirt and mud on improved streets and roads.
(9) Minimizing topsoil disturbance and reclaiming as soon as possible.

17.322. Sequential blasting be employed whenever or wherever feasible to reduce the amounts of particulate matter.

17.323. Such dust control strategies as revegetation, delay of topsoil disturbance until necessary, or surface compaction and sealing, be applied.

17.324. Haulage equipment be washed or wetted down, treated, or covered when necessary to minimize the amount of dust becoming airborne in transit and in loading.

17.325. Stockpile of materials be treated to prevent blowing or the material be contained in silos or other suitable enclosures.
17.326. Waste disposal sites be so operated and constructed as to prevent particulate matter from becoming airborne.
17.327. All conveyors, transfer points, crushers, screens, and dryers be so constructed, protected, or treated as to prevent particulate matter from becoming airborne.
17.328. These measures also be used during period when actual construction work is not being conducted, such as on weekends and holidays.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

R23-25-17.400*. Restriction of fugitive gaseous emissions.

17.410. No person shall emit or cause to be emitted into the ambient air from any source of fugitive emissions as specified in section 17.110 any gases which:
17.411. Exceed the ambient air quality standards of Regulation R23-25-02 at or beyond the property line of the source, or
17.412. Exceed the prevention of significant deterioration of air quality increments of Regulation 23-25-15 at or beyond the property line of the source for sources subject to Regulation R23-25-15, or
17.413. Exceed the emission restrictions for odorous substances of Regulation R23-25-16 at or beyond the property line of the source, or
17.414. Exceed the restrictions on the emission of visible air contaminants of Regulation R23-25-03 at or beyond the property line of the source.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-18. Stack Heights

33-15-18-01. General provisions.

1. The degree of emission limitation required of any source for control of any air contaminant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in 33-15-18-03.

2. Definitions. As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04 North Dakota Century Code chapter 23-25.

a. "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical onsite construction of the stack; or (2) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

b.

(1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(a) Using that portion of a stack which exceeds good engineering practice stack height;

(b) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(c) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(2) The preceding sentence does not include:

(a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which is was originally discharged from the facility generating the gas stream;

(b) The merging of exhaust gas streams where:

[1] The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

[2] After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

[3] Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source.

(c) Smoke management in prescribed agricultural or silvicultural burning programs;

(d) Episodic restrictions on residential woodburning and open burning; or

(e) Techniques under subparagraph c of paragraph 1 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed five thousand tons per year.

c. "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under paragraph 3 subdivision d and means:

(1) For sources seeking credit for stack height exceeding that established under paragraph 2 of subdivision d, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence

of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to chapter 33-15-15, prevention of significant deterioration of air quality, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part must be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the department, an alternative emission rate must be established in consultation with the source owner or operator;

(2) For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under paragraph 2 of subdivision d, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects as provided in paragraph 1, except that the emission rate specified by the department (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the department; and

(3) For sources seeking credit after January 12, 1979, for a stack height determined under paragraph 2 of subdivision d where the department requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in paragraph 2 of subdivision d, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least forty percent in excess of the maximum concentration experience in the absence of such downwash, wakes, or eddy effects.

d. "Good engineering practice" (GEP) stack height means the greater of:

(1) Sixty-five meters [213.25 feet], measured from the ground-level elevation at the base of the stack;

(2)

(a) For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required by article 33-15, air pollution control,

$H_g = 2.5H,$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation.

(b) For all other stacks,

$H_g = H + 1.5L,$

where:

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structures measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structures,

provided that the department may require the use of a field study or fluid model to verify good engineering practice stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the environmental protection agency, state or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air contaminant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

e. "Nearby" as used in subdivision d is defined for a specific structure or terrain feature and

(1) For purposes of applying the formulae provided in paragraph 2 of subdivision d means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometers [½ mile]; and

(2) For conducting demonstrations under paragraph 3 of subdivision d means not greater than 0.8 kilometers [½ mile], except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height (H_t) of the feature not to exceed two miles [3.22 kilometers] if such feature achieves a height (H_t) 0.8 kilometers [½ mile] from the stack that is at least forty percent of the good engineering practice stack height determined by the formulae provided in subparagraph b or paragraph 2 of subdivision d or twenty-six meters [85.30 feet], whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

f. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-18-02. Good Engineering Practice Demonstrations.

Before a new or revised emission limitation is approved that is based on a good engineering practice stack height that exceeds the height allowed by paragraph a or b subdivision d of subsection 2 of section 33-15-18-01, the department shall notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. In no event may the department prohibit any increase in stack height or restrict the stack height of any source.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-18-03. Exemptions.

The provisions of this chapter do not apply to stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed, or reconstructed, or for which major modifications, were carried out after December 31, 1970.

General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

33-15-19 Visibility Protection

33-15-19-01. General provisions.

1. **Applicability**. The provisions of this chapter apply to the owner or operator of a major stationary source or major modification, as defined under section 33-15-15-01, whose construction or modification is commenced after August 12, 1985. The standards shall be applied in conjunction with the procedures set forth in chapters 33-15-12, 33-15-14, and 33-15-15.

2. **Definitions**. As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04, 33-15-12-01 or 33-15-15-01 or in North Dakota Century Code chapter 23-25.

a. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with times of visitor use of the federal class I area, and the frequency and timing of natural conditions that reduce visibility.

b. "Natural conditions" include naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

c. "Visibility impairment" means any humanly perceptible change in visual range, contrast, or coloration from that which would have existed under natural conditions.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-19-02. Review of new major stationary sources and major modifications.

1. **Visibility impact analysis**. The owner or operator of a major stationary source or major modification, subject to subsection 1 of section 33-15-19-01, shall demonstrate to the department that the actual emissions from the major stationary source or major modification, including fugitive emissions, will not cause or contribute to adverse impact on visibility within any federal class I area. The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to support any analysis or determination made. The owner or operator of a proposed major stationary source or major modification subject to the requirements of this subsection, shall provide a visibility impact analysis of the visibility impact likely to occur as a result of general commercial, residential, industrial, and other growth associated with the source or major modification.

2. **Visibility models**. All estimates of visibility impact required under this section must be based on those models contained in "Workbook for Estimating Visibility Impairment" (EPA-450/4-80-031, November 1980). Equivalent models may be used subject to prior approval by the department.

3. **Notification of permit application**. The department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification must include a copy of all information relevant to the permit application and must be given within thirty days of receipt and at least sixty days prior to any public hearing on the application for a permit to construct. Such notification must include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination of anticipated impacts on visibility in any federal class I area, and shall make available to them any materials used in making that determination, promptly after the department makes such determination. The department shall also notify all affected federal land managers within thirty days of receipt of any advance notification of any such permit application.

4. **Federal land manager review**. The department shall consider any analysis performed by the federal land manager, provided within thirty days of the notification required by subsection 3 of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the department finds that such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result in the

federal class I area, the department will in the notice of opportunity for public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

5. **Permits**. No source subject to this chapter may be issued a permit to construct if the department determines that an adverse impact on visibility in any federal Class I area will occur because of the proposed source or major modification.

6. **Public participation**. Where a permit application has been filed for a source subject to the provisions of this chapter, the public must be given an opportunity for review of the permit application and the department's determination as described in subsection 5 of section 33-15-15-01.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-19-03 Visibility monitoring.

The department may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the department deems necessary and appropriate. This can include preconstruction, concurrent with construction, or postconstruction monitoring or any combination thereof.

The department shall provide its proposed requirements for visibility monitoring by the owner or operator to the federal land manager prior to issuing a permit to construct. The department shall consider the federal land manager's comments on the proposed monitoring in any final determinations to be placed on a permit to construct or permit to operate, or both.

General Authority: NDCC 23-25-03, 28-32-02

Law Implemented: NDCC 23-25-03

33-15-20. Control of Emissions from Oil and Gas Well Production Facilities

33-15-20-01. General provisions.

1. **Applicability.** The provisions of this chapter apply to any oil or gas well facility which emits air contaminants to the atmosphere.
2. **Definitions.** As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04 or in North Dakota Century Code chapter 23-25.

a. "Actively producing" means a well · has been producing for thirty days or more from initial production through the wellhead equipment.
b. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the North Dakota state industrial commission.
c. "Completion" means an oil well must be considered completed when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run. A gas well must be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole must be considered complete when all North Dakota state industrial commission provisions of plugging are complied with.
d. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
e. "Continuous burning pilot" means a stable auxiliary flame supported by a reliable fuel source which is independent of wellhead production.
f. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seven-tenths pounds per square inch [1034 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [15.5 degrees Celsius].
g. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota state industrial commission.
h. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
i. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of specific gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
j. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the North Dakota state industrial commission.
k. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
l. "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces.
m. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool.
n. "Production facility" means all equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines, and auxiliary nontransportation-related equipment used in the exploration, development, or subsequent production or handling of oil and gas from an oil or gas well or wells which are located on one or more contiguous or adjacent surface properties and are under the control of the same person (or persons under common control).
o. "Recomplete" or "recompletion" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
p. "Reservoir" means pool or common source of supply.

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-20-02. Registration and reporting requirements.

1. The owner or operator of any actively producing oil or gas well that is completed or recompleted on or after July 1, 1987, shall submit an oil and gas well registration form available from the department, and an analysis of any gas produced from the well.

The registration form and gas analysis must be submitted to the department within ninety days of the well achieving active production status. The registration form must contain sufficient information to allow the department to determine if the oil or gas well and associated production facility is in compliance with all applicable sections of this chapter.

2. [Reserved]

3. The owner or operator of any oil or gas well subject to this section shall inform the department of any change to the information contained on the registration form for a particular well and shall submit a new gas analysis if the composition or the volume of the gas produced from the well has changed from the previous analysis to cause an increase of ten tons per year or more of sulfur (all sulfur compounds expressed as S).

General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

3-15-20-03. Prevention of significant deterioration applicability and source information requirements

1. Any oil or gas well production facility that is a major stationary source or a major modification as defined in chapter 33-15-15, shall comply with the permitting requirements of chapter 33-15-15.

2. To determine prevention of significant deterioration of air quality (PSD) applicability for sulfur dioxide, the following formula must be used:

$E = 0.00084\ (R)(T)\ (\%\ H_2S)$

where:

E = sulfur dioxide emission rate (tons/yr).

R = the average daily amount of gas burned, incinerated and/or flared (thousand cubic feet per day-MCFD) based upon a thirty-day period. The thirty-day period must be the last thirty operating days of a one hundred eighty-day period following the completion or recompletion of a well. In cases where the well is shut in for extended periods during the one hundred eighty-day period following completion or recompletion, a case-by-case determination of PSD can be requested of the department.

T = days of operation per year (days/yr). This number must be three hundred sixty-five unless there are verifiable physical limitations or a federally enforceable permit that limits the number of operating days.

% H_2S = mole percent hydrogen sulfide content as determined by the most recent gas analysis.

The formula is derived as follows:

$$E=\frac{\text{Mcf}}{\text{day}}\left(1000\ \text{cf}\right)\left(\%H_2S\right)\left(\frac{\text{lb-mole}}{379.5\ \text{cf}}\right)\left(64.06\ \text{lb}\ SO_2\right)\left(\frac{\text{days}}{\text{year}}\right)\left(\frac{\text{ton}}{2000\ \text{lb}}\right)$$

$$E = 0.00084\ \frac{(\text{Mcf})(\text{days of operation})}{\text{day}\qquad\text{year}}(\%\ H_2S)$$

Emissions from all onsite equipment at the production facility must be included in the total annual emission determination.

3. The owner or operator of any oil or gas well production facility subject to subsection 1 of this section shall provide information to demonstrate that emissions from the facility do not significantly contribute to exceeding the ambient air quality standards, as defined in chapter 33-15-02, or class I or class II increments, as defined in chapter 33-15-15; and shall address other requirements as specified in chapter 33-15-15.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-20-04. Requirements for control of production facility emissions.

1. The emissions from all treaters, separators, engines, incinerators, flares, tanks, and other onsite equipment must comply with the requirements of subsection 5.
2. Each flare used for treating gas containing hydrogen sulfide (H_2S), must be equipped and operated with an automatic ignitor or a continuous burning pilot which must be maintained in good working order. This is required even if the flare is used for emergency purposes only. A continuous burning pilot is required if this department determines that an automatic ignition system is ineffective due to production characteristics. The flare stack must be of sufficient height to allow for adequate dispersion of sulfur dioxide (SO_2) necessary to meet the requirements of this article.
3. Any volatile organic compound gas or vapor may be subject to controls as specified in chapter 33-15-07.
4. Routine inspections and maintenance of tanks, hatches, compressors, vent lines, pressure relief valves, packing elements, and couplings must be conducted to minimize emissions from equipment used for gas containing hydrogen sulfide (H_2S). Tank hatches must hold a positive working pressure or must be repaired or replaced.
5. The owner or operator of any oil or gas well production facility shall install equipment necessary to ensure that emissions comply with the ambient air quality standards of chapter 33-15-02, including, but not limited to, hydrogen sulfide and sulfur dioxide; the Class I and Class II increments for sulfur dioxide, nitrogen dioxide, and particulate matter of chapter 33-15-15, if applicable; the odor concentration limits of chapter 33-15-16; and any other applicable chapter of this article. For the purpose of this chapter, compliance must be determined outside the surface boundary of the production facility.
6. When a malfunction, the correction of a malfunction or maintenance at any oil and gas well production facility occurs that can be expected to cause the emission of air contaminants in violation of this article for longer than twenty-four hours, the person responsible for such installation shall notify the department of such malfunction or maintenance as set forth in section 33-15-01-13. This subsection pertains only to the reporting of malfunctions and maintenance and does not obviate the source's responsibility to comply with the remainder of this chapter or article.
7. The owner or operator of any oil and gas well production facility completed prior to the effective date of the revisions to section 33-15-20-04 shall comply with the requirements of this chapter within six months of the effective date of these revisions. The owner or operator of any oil and gas well production facility completed after the effective date of the revisions to section 33-15-20-04 shall comply with the requirements of this chapter within ninety days of the completion of the well.

General Authority: NDCC 23-25-03

Law Implemented: NDCC 23-25-03

33-15-23. Fees.

33-15-23-01. Definitions.

For purposes of this chapter:

1. "Major source" means any source that has been issued or is required by this article to obtain a title V permit to operate. This includes sources that have begun operation but have not yet applied for a title V permit to operate.
2. "Minor source" has the meaning given to it in section 33-15-14-01.1.

General Authority: NDCC 23-25-03, 23-25-04

Law Implemented: NDCC 23-25-03, 23-25-04

33-15-23-02. Permit to construct fees.

Any person constructing, installing, or establishing a new stationary source or altering an existing source which requires a permit to construct under subsections 1 and 3 of section 33-15-14-02 is required to pay a permit to construct application filing fee and a permit to construct processing fee to the state department of health.

1. **Application fee**. A nonrefundable filing fee of three hundred twenty-five dollars must be submitted with the permit application.
2. **Processing fee**. The applicant shall pay a processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources which would involve a major analysis the cost of which would exceed three hundred twenty-five dollars as determined by the department. The following procedures and criteria will be utilized in establishing the fee:

a. A record of all permit to construct application processing costs incurred must be maintained by the department.

b. Upon request, the department, in consultation with the applicant, will prepare an estimate of the processing fee and the billing schedule that will be utilized in processing the application.

c. After final determinations on the application have been made, a final statement will be sent to the applicant containing the remaining actual processing costs incurred by the department.

d. The applicant must pay the processing fee regardless of whether a permit to construct is issued, denied, or withdrawn.

e. Any source that initiates operation under a permit to construct prior to receiving a permit to operate is subject to the fees outlined in section 33-15-23-03 or 33-15-23-04, whichever is applicable.

General Authority: NDCC 23-25-03, 23-25-04.2

Law Implemented: NDCC 23-25-03, 23-25-04.2

33-15-23-03. Minor source permit to operate fees.

1. The owner or operator of each installation subject to a permit issued under section 33-15-14-03 shall pay an annual permit fee based on the following table:

Classification	Annual Fee ($)
Designated	300
Monitor (CEMS or Ambient Site)	600/CEMS or Site
Other	100
State and local government	0
Exempt	0

The following criteria are used to classify sources for determining minor source annual fees:

Designated: A source that is designated for scheduled inspections.

Monitor: A charge in addition to the annual fee for any source operating a continuous emission monitor system (GEMS} or an ambient monitoring site.

Other: As designated by the department.

State and local government: Any installation owned by the state of North Dakota or a local government.

Exempt: As designated by the department.

2. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:
a. Observation of source or performance specification testing, or both.
b. Audits of source operated ambient air monitoring networks.
An accounting of the actual costs incurred under this subsection must accompany the notice of the annual permit fee.
3. Annual emissions are derived using representative source test data, "compilation of air pollution emission factors (AP-42)" or other reliable data.
4. The classification of "other" and "exempt" shall be designated by the department on a case-by-case basis.
5. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following the date of such notice.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-04.2

CHAPTER 33.1-15-25
REGIONAL HAZE REQUIREMENTS

Section
33.1-15-25-01 Definitions
33.1-15-25-02 Best Available Retrofit Technology
33.1-15-25-03 Technology Required to Make Reasonable Progress Toward the National Visibility Goal
33.1-15-25-04 Monitoring, Recordkeeping, and Reporting

33.1-15-25-01. Definitions.

The definitions in title 40 Code of Federal Regulations part 51, section 301, as they exist on July 1, 2019, are incorporated by reference into this chapter. For purposes of this chapter only:

1. "Boiler operating day" means any twenty-four-hour period between midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

2. "Contributes to visibility impairment" means a change in visibility impairment in a class I federal area of five-tenths deciviews or more (twenty-four-hour average) above the average natural visibility baseline. A source exceeds the threshold when the ninety-eighth percentile (eighth highest value) of the modeling results based on any one year of the three years of meteorological data modeled exceeds five-tenths deciviews.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-25-02. Best available retrofit technology.

1. [Reserved].

2. **Installation of best available retrofit technology.** The owner or operator of any existing stationary facility as defined in title 40 Code of Federal Regulations section 301, which contributes to visibility impairment in a class I federal area shall install and operate best available retrofit technology. The equipment shall be installed and operating as expeditiously as practicable but in no event later than five years after the United States environmental protection agency's approval of North Dakota's state implementation plan revision for best available retrofit technology.

3. **Operation and maintenance of best available retrofit technology.** The owner or operator of a facility required to install best available retrofit technology under subsection 1 shall establish procedures to ensure such equipment is properly operated and maintained.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-25-03. Emission reduction measures required to make reasonable progress toward the national visibility goal.

The owner or operator of an existing stationary source, or group of sources, shall implement emission reduction measures to make reasonable progress, as determined in accordance with title 40, Code of Federal Regulations, part 51, section 308, when required in a state implementation plan revision developed by the department. The measures shall be implemented within a reasonable timeframe after the United States environmental protection agency's approval of North Dakota's state implementation plan revision. The measures and compliance deadline shall be determined on a source-

by-source basis and shall be included in North Dakota's state implementation plan revision. All required measures shall be properly operated and maintained.

History: Effective July 1, 2020.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21

33.1-15-25-04. Monitoring, recordkeeping, and reporting.

The owner or operator of any existing stationary source, or group of sources that are required to install best available retrofit technology, or emission reduction measures to meet the reasonable progress goals, shall conduct monitoring, recordkeeping, and reporting sufficient to show compliance or noncompliance. Monitoring for sulfur dioxide and nitrogen oxides from the main stack of a fossil-fuel-fired steam electric plant shall be conducted using continuous emissions monitoring systems which comply with the requirements of section 33.1-15-21-09. Particulate monitoring shall be in accordance with the requirements of subsection 10 of section 33.1-15-14-06. Recordkeeping and reporting shall comply with the requirements of section 33.1-15-14-06. Monitoring, recordkeeping, and reporting for other source units shall comply with the requirements of section 33.1-15-14-06.

History: Effective January 1, 2019; amended effective July 1, 2020.
General Authority: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08; S.L. 2017, ch. 199, § 21